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[Ruud v. Westinghouse Hanford Co., 88-ERA-33 \(ALJ Mar. 15, 1996\)](#)

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Date: March 15, 1996

Case No. 88-ERA-33

In the Matter of

CASEY RUUD,
Complainant,
v.

WESTINGHOUSE HANFORD COMPANY,
Respondent.

Appearances by: Robert A. Jones, Esq.
for Complainant

Stuart R. Dunwoody, Esq.
Robert A. Dutton, Esq.
for Respondent

Before: FLETCHER E. CAMPBELL, JR.
ADMINISTRATIVE LAW JUDGE

RECOMMENDED DECISION AND ORDER

INTRODUCTION

On February 28, 1988, Complainant, Casey Ruud, acting *pro se*, filed a handwritten complaint with the Department of Labor against Westinghouse Hanford Company (WHC) alleging discrimination, harassment and termination as a result of his testimony before Congress regarding environmental and safety issues at Respondent's Hanford facility, where he had worked. The Wage and Hour Division of the Department of Labor advised Complainant by letter that it would investigate the complaint under the Energy Reorganization Act (ERA), 42 U.S.C. 5851. Complainant secured legal

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representation by the early summer of 1988, after which the parties reached a settlement agreement. The settlement agreement was first embodied in a document signed by the parties on July 25, 1988 (CX 57) [1] but was modified two weeks later to drop the Department of Energy as a party and to alter certain

confidentiality provisions (Tr. 429 - 30). This modification was accomplished by the document which is in evidence as CX 60, which deleted the pertinent language. Pursuant to an agreement between the lawyers for the parties, the new settlement agreement was not executed, and Complainant simply initialed the places where language had been deleted (Tr. 656-7; RX 68 at 471; RX 79 at 70-1).

The then presiding Administrative Law Judge entered an order of dismissal on August 3, 1988 based on his belief that all matters were in fact settled. However, this agreement was never ratified by an Administrative Law Judge despite then Secretary Dole's order of February 14, 1990 to submit the settlement to her for approval.

On June 7, 1994, Secretary Reich in effect voided the Administrative Law Judge's "Order of Dismissal with Prejudice" of August 3, 1988 and held that a case may not be dismissed on the basis of a settlement unless the Secretary has found the terms to have been fair, adequate, and reasonable. Referring to Respondent's refusal to disclose the settlement terms, the Secretary found that he could not approve the settlement without reviewing it, and he rejected the Administrative Law Judge's ("recommended") order of dismissal. Finally, he remanded the case for hearing.

On March 1, 1995, the case was referred to me to carry out the Secretary's order. Following completion of discovery and the disposition of numerous pretrial motions, a hearing was held on this matter at Richland, Washington on August 8-11, 1995, at which time the parties were afforded a full opportunity to present evidence and argument. The findings and conclusions which follow are based on a complete review of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations and pertinent precedent.

ISSUES PRESENTED

1. Should the settlement agreement be approved as fair, adequate and reasonable, or was it obtained by fraud or invalid for other reasons?

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2. Did Casey Rudd engage in protected activity under any relevant environmental statute?

3. Did WHC discriminate against Complainant because of any protected environmental whistleblowing activity?

4. What remedies if any should be ordered?

STATEMENT OF FACTS

What follows is a summary of the testimony adduced at the hearing as well as of deposition testimony introduced and received in evidence. The testimony of several witnesses (e.g., Kurt Linsenmeyer, Robert McCord and Ambrose Schwallie) is not included because I have concluded that it is irrelevant.

A. *Testimony of Casey Ruud*

Casey Ruud, the complainant, is employed with the Department of Energy as an environmental specialist through an agreement between the Department of Energy and the Washington State Department of Ecology (Tr. 57-8). This assignment began in April 1994 (Tr. 59). Ruud began working for the Washington Department of Ecology in May 1991 (Tr. 58).

Ruud is a high school graduate who has attended Boscoe Institute of Technology for non-destructive testing and also has taken technical courses in engineering in the commercial nuclear industry, as well as communications and writing courses and auditor courses (Tr. 62). Ruud was certified by the American Welding Society as a certified welding inspector. In 1992 he became a certified environmental trainer for the Environmental Training Association (Tr. 62).

Ruud was laid off from Westinghouse Hanford Company (WHC) at the end of February 1988 (Tr. 63). At that time he was a certified lead auditor, who was certified to train people in performing audits and other functions. Ruud had a Q security clearance (Tr. 63).

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Ruud was employed by Triad Engineering in the early 1970s doing concrete inspection, testing and soils testing. He then worked for Independent Deputy Inspectors performing inspections of building construction in the Los Angeles area. For the next five years he worked for Johnston Pump Company in a job that involved the fabrication of commercial nuclear pumps. He was a supervisor of welders and fitters and was responsible for quality control and inspection of the components being fabricated. He then worked for Bechtel Power Corporation at the San Onofre Nuclear Power Plant as a quality assurance engineer, performing oversight of the design, construction and fabrications of the nuclear power plant. For Bechtel, he also worked at the Washington Public Power Supply System facility and the Diablo Canyon Facility in California and did a number of management-type system audits throughout the country, evaluating compliance with the nuclear regulatory requirements for fabrication and design of facilities. In April 1985 he went to work for Rockwell Hanford operations as an advanced quality assurance engineer (Tr. 64-5).

Until September of 1986, Ruud's duties as lead auditor at

Rockwell were to perform audits of the plutonium processing facilities, which included the Purex plant, the Plutonium Finishing Plant, and the tank farms where the waste is stored. This involved developing checklists to determine whether the requirements were being applied as required by law and DOE orders and then verifying that they are properly implemented (Tr. 65-6).

When Ruud was assigned an audit, an audit plan was generated which would identify the scope of the audit. He would research the files for previous audits and any other information related to the audit. Then, he would develop a checklist and make sure that other team members developed checklists. Sometimes an audit will go in another direction or "out of scope" on issues serious enough to pursue (Tr. 66-7).

From the beginning, Ruud found problems such as inspectors not properly certified on safety class equipment. He also found that the actual construction or the fabrication of the components was faulty in that welds were smaller than they should have been.

There were 27 audit findings in his first audit showing

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that the plant was not complying with the requirements for making safe components (Tr. 67-8). During the first welding audit, Ruud wrote three priority audit findings, which usually indicate a show cause for stop work, under which you must either stop work or show reasons why work should continue (Tr. 68).

Subsequently, Ruud performed a design control audit and found that the design was being performed without verification and requirements that were needed to make sure that they had safe designs. In fact, he found that those designs were in some cases not safe and did cause a serious harm to workers. Management did not want Ruud to issue a stop-work order. Instead, he issued a memo stating that he believed that work should be stopped on all of the facilities. The procedures as written were not followed (Tr. 69).

Ruud performed a burial grounds audit to look at the different aspects of the burial grounds to determine if they were controlling and disposing of their waste properly within the quality assurance requirements as well as environmental and radiologically safe requirements (Tr. 70).

The sign-posting incident involved a misrouting of nitric acid solution from the Purex facility, which contained plutonium, to a line in the tank farms which was not designed to handle that waste. The nitric acid solution leaked through the packings, flanges and valves into the soil, producing a high radiation area as well as the hazardous components of the waste. It went under a roadway, which had to be posted so that no one would enter into it unknowingly or without authorization. During a tour of the Hanford site by Governor Gardner, management determined that it did not want to raise any issues with the Governor and the media; so, they ordered that all of the flashing lights and alarms

within the farms be turned off and all of the sign postings be removed. The Governor and the other people in his bus were driven over the high radiation area, after which the signs were put back. This incident became publicly known approximately a year after the event (Tr. 71-3).

During the burial ground audit, someone reported to Ruud that there was a concern over how the waste that had leaked out of the lines was being disposed of in a retired burial ground without authorization. Ruud took pictures and

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documented it, as did the person responsible for environmental activities (Tr. 73).

Ruud received a letter at home signed by "Afraid to be Blackballed" identifying concerns related to the sign posting incident. It was copied to the *Seattle Times* and numerous congressmen and senators. Ruud took the letter to management and met with the director of the safety and quality assurance organization. Ruud was told not to talk to the media (Tr. 74-5).

The nuclear materials control audit involved the processing and controls of the plutonium solutions ultimately turned into plutonium buttons to be used in warheads. Those solutions contained sundry toxic chemicals as well as plutonium. Ruud recommended a stop work order because there was evidence that the facility was out of control. They were storing plutonium nitrate solutions in violation of all requirements and were susceptible to criticality accidents. A "criticality" accident is a nuclear chain reaction caused by the configuration of too much plutonium in one place at one time. Also, there was an obvious opportunity for theft of plutonium (Tr. 75-6).

When Ruud made the recommendation that work be stopped, a review of his audit was done. Ruud's first audit was brought to the attention of the highest level of management. Management was upset about his findings and demanded that they be corrected and issued letters, memos and directives on it. Management then asked Ruud to reconvene about three months later with another team that management had hand picked (Tr. 76-7).

A second audit's findings were more significant than were those of the first audit. The manager of the quality assurance audit group, John Baker, prepared a stop work memo for the Director of Safety and Quality Assurance to cease operations of the PFP, Purex and Tank Farm activities that could be stopped. Clay Crawford, the assistant general manager of the facility, held a meeting the next day in order to avoid stopping work and determine how to keep this information from the newspapers (Tr. 77-80).

Albaugh suggested that, if the audit were classified, the data would not be available under the Freedom of Information Act. This was considered inappropriate because the audit did not contain classified information, except for

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one observation which remained classified. The result of the meeting was that management decided that it would continue to operate the plants because their mission was producing plutonium. Now would not be the time to bring these issues forward, because it would impact on Rockwell's ability to get the next contract. They decided to continue at risk and felt they could fix the problems. Ruud disagreed and voiced his opposition (Tr. 81-3).

CX 9 page 487 is a copy of the "Mad-As-Hell Memo" written by the Assistant General Manager of Rockwell regarding the original audit of the nuclear material control. Page 788 of that exhibit is a copy of the minutes of the meeting that was held after the follow-up audit. It stated, "A proposed draft of a stop work action letter was discussed and all present agreed that such a letter was not warranted." Ruud was asked to sign off on a memorandum to that effect but refused to do so, instead writing a memo stating that he could not agree with the meeting minutes. CX 9 page 489 is a copy of the memo from Ruud to R. B. Gelman, who was acting for the Director of Safety and Quality Assurance. Gelman's reaction was that Ruud's memo was not consistent with what management wanted because it precluded WHC's ability to operate the facilities. He wanted Ruud to rescind the memo (Tr. 86-9).

Ruud had issued a similar memo in reference to the design control audit in March or April of 1986, when two individuals received plutonium puncture wounds. The general manager required everyone at the site to view a videotape to make sure that they did not violate procedures. The company claimed that the workers received puncture wounds when they violated procedures. Ruud issued a memorandum stating that the cause of the accident was a failure to resolve the problems with the design control audit (Tr. 89-90).

As a result of the memo dated August 26, 1986 to Gelman, Albaugh and Gelman assured Ruud that the plants would be run safely and, asked if he would then agree that a stop-work order was not warranted, Ruud said that it was not appropriate: the plants should be shut down, and they were keeping the plants open at their own risk (Tr. 91-2).

In the beginning of September 1986 Ruud finally decided to contact the news media. He told Eric Nalder of the *Seattle Times* that the plants were not being operated safely and that Ruud needed to do what was necessary to get the

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attention of the public to try to intervene and stop this behavior. Nalder said that he would take the audit reports but wanted to have an independent source review them to determine the validity of the audit reports and the significance of them (Tr. 92-3).

A couple of weeks later, Nalder told Ruud that a University of Washington professor had reviewed the audit reports and that the information was serious and needed to be brought to the

public's attention Nalder had also presented this information to the editors of the newspaper, and they were quite interested Nalder said that he would try to make sure that the information was protected and not have Ruud involved directly. Prior to this incident, Ruud had not supplied any information to reporters concerning activities at the plant (Tr. 94-5).

Prior to the story being run, Ruud was called to go to the Richland Federal Department of Energy offices. Higher management level people were there and played a recording they had made of a conversation between Rockwell's General Manager and Eric Nalder Nalder was to come the following day to interview Rockwell management, and he was telling them the issues that he was interested in. D.O.E. was concerned with who had talked to Nalder and how they could show that they had taken corrective action to resolve these problems. They eventually saw that they had not corrected their problems, and they were going to have media exposure. Ruud was asked if he knew who contacted Nalder. Ruud replied that there were a number of people that were very discouraged and disgruntled over how things were managed. Management wanted to find out who leaked the information and how this could impact the Rockwell attempt to get the contract. They indicated that the person who leaked the information would be fired (Tr. 96-7).

Gelman did not advise Nalder that the conversation was being taped until after 15 or 20 minutes had elapsed (Tr. 98-9).

In the beginning of October 1986, Jeff Hodges of the U.S. House Oversight and Investigation Subcommittee contacted Ruud. Hodges said that Chairman Dingell was concerned with the operation of Hanford and asked if Ruud would be willing to speak with the subcommittee regarding the audits. Ruud said that he would. Ruud was flown the next day to Washington, D.C., where he met for three days

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with two congressmen and their staffs, as well as the staff from the minority side and the majority side (Tr. 99-100).

The day Ruud flew to Washington, D.C., PFP and Purex had been shut down by the Department of Energy for reasons unrelated to Ruud's audit reports (Tr. 100-1). In Washington, D.C., Ruud met with Dr. Russell, an environmental health specialist. Dr. Russell was concerned about the effects of improper storage and releases of hazardous and radioactive waste at the Hanford site. Ruud told her that he had performed an audit that identified serious concerns about the storage and disposal of these types of wastes and that he was also concerned. Ruud also met with Jeff Hodges and Congressman Wyden. Congressman Wyden was extremely concerned about potential impact of the Hanford operations on his constituents in Oregon, particularly the release of materials into the Columbia River as well as into the air. Congressman Wyden was also concerned about the high level waste storage tanks that were leaking and getting into the groundwater. Congressman Wyden had Ruud explain the audits that directly pertained to the

issues the Congressman was concerned about (Tr. 101-3). Ruud also discussed his burial ground audits (Tr. 104).

Ruud identified CX 106 as the welding audit. He stated that, during his deposition, it was discovered that large numbers of pages were missing in particular, page 106056, which was the computer automated tracking sheet that is used to track the audit findings and to close out the audit findings.

Ruud identified CX 107 as the burial grounds audit and determined that there were 90 pages missing from this exhibit (Tr. 109).

CX 108 was identified as the pages related to the burial grounds audit which were missing from CX 107. Page 107276 is one of the computer sheets for closeout of one of Ruud's audit findings in the burial grounds audit. The audit finding was "Plutonium Finishing Plant, PFP, managers have not been trained to WIPP certification requirements." This form indicates that it was closed out, which means that all the action was completed and is no longer an issue (Tr. 110-11).

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When Ruud was originally questioned by Congress in October of 1986, their concerns were that there was a major breach of environmental statutes. Since that time, Ruud has had discussions with the subcommittee about what the new contractor is doing about these issues. Ruud told them that many of same manager personnel at Westinghouse were previously Rockwell people who were making the same decisions that they had previously made at Rockwell (Tr. 114-18).

Ruud was not responsible for signing off on audit findings concerning the dumping on the ground of the contaminated soil and the dumping into the pits. He was responsible for making sure that it did get signed off and that the corrective action was ready. Ruud signed off on some of the findings because there was pressure by management to close out audit findings, and the best that could be done was to point them in the right direction because they did not have the support of management to change the way things were done (Tr. 118-20).

CX 106, page 106556, is a letter from a QA manager responsible for one of the priority audit findings on the welding audit to Ruud's manager, stating his disappointment or concern about Ruud's reluctance to close out the audit findings and demanding that the findings be closed. A handwritten note at the bottom of the letter written by Ruud's manager, John Baker, says, "Casey, this letter is a much different position on the issue than previously taken. I suggest we close." After a discussion with John Baker, Ruud closed the audit, although he did not agree that it should be closed (Tr. 121-2).

Ruud transferred to the BWIP (Basalt Waste Isolation

Project) project in November 1986. In August, Ruud applied to be promoted to a Level 9 (senior engineer level) job at BWIP. He had applied for the position because it was an increase in pay and it would get him out of an environment in which he could not make corrective actions that needed to be taken. Prior to the time when Ruud met with Congress, he was told by Blaine McGillicuddy, the supervisor filling the open position, that he had gotten the promotion and would be going to BWIP immediately after he returned from his meeting with Congress. When Ruud returned from Washington, his current manager, John Baker, told him that he would not be getting a promotion, that Rockwell had a policy that did not allow for promotions on transfers. Prior to meeting with

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Congress, Ruud had been told that he would be promoted if he was the most qualified candidate and the person selected. Ruud reviewed the personnel policies on promotions and transfers and did not find any policy prohibiting his promotion. Harry Lacker of the personnel department at Rockwell told Ruud that that was an unchallengeable company policy. Lacker did not show Ruud a policy in writing (Tr. 192-5).

Ruud was transferred to BWIP even though the paperwork had not been completed. The Director of Safety and Quality Assurance, Jim Albaugh, wanted him there. Congress requested that it be supplied with all the documentation concerning Ruud's transfer. Ruud believes that some of it was supplied but that at least one document was not. Ruud did not receive his promotion until April of 1987. He was told by his supervisors at BWIP, Blaine McGillicuddy, Harry Tuthill and Roger Johnson, that he was not promoted until April 1987 because he had to prove himself in the position before he could be promoted. No one had expressed concern about whether Ruud was qualified for the senior engineer position at the time he transferred. The documentation justifying Ruud's selection relied on his past performance and the work he had performed and indicated that he had exceeded all of the requirements as a Grade Level 9 senior engineer level (Tr. 196-8).

Between October 1986 and October 1987, Ruud made two or three additional trips to Washington to work with the subcommittee investigative team and to help them understand issues related to the Hanford site. Ruud also communicated on a regular basis with Congressional representatives. Prior to the hearing in 1987, the focus of the subcommittee staff was how well the new contractor was functioning and how well it was doing in correcting the problems that were there during the previous contractor's tenure. Ruud told the staff that Westinghouse continued to utilize the same managers that were involved in the violations and poor management at Rockwell were now managing the same facilities (Tr. 198-200). Ruud felt that the changeover had caused confusion because a new company had been brought in and had new ways of communicating (Tr. 200).

Ruud had found significant problems with the BWIP supplier quality program. The data that was being collected by the

scientific laboratories had not been collected under adequate quality assurance, and, therefore, were of no use.

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At the time when the BWIP project was cancelled by Congress, these problems had not been taken resolved. The Congressional staff was concerned about situating the facility at Hanford and whether the site would meet its criteria. Ruud testified before Congress in October 1987 about these problems (Tr. 201-4).

A couple of weeks before Ruud testified before Congress in October 1987, Ruud felt that McGillicuddy was trying to put him into a no-win situation wherein he was constantly asking Ruud to support the work that he had done. McGillicuddy stated, "Casey, I'm going to keep you so busy that you will never know what the right answer is," McGillicuddy had some private meetings with Phil Bourne during that period and continued to harass Ruud by marking up his documents and making multiple requests. CX 117 is a package that Ruud provided to Chris Jensen, an investigator investigating the concerns raised in the Congressional hearing on May 11, 1988. Ruud stated that one document missing from the package had a note saying, "Isn't it tough being an authority?" at the end of another request for information (Tr. 206-9).

Ruud became aware that McGillicuddy had been keeping notes on Ruud's activities three days prior to the hearing. Ruud noticed a change in McGillicuddy's behavior toward him just prior to when Ruud testified before Congress. McGillicuddy retained a negative attitude afterward also. McGillicuddy seemed very hostile toward Ruud because Ruud was finding problems with the program for which McGillicuddy had been responsible. McGillicuddy seemed to believe that Ruud thought that Ruud was the only person who had any intelligence and that everyone else was not doing his or her job (Tr. 209-13).

Dennis McCain was very angry at Ruud for airing dirty laundry. McCain told him that if the bosses followed a policy that caused a catastrophic accident, then that's what

they're paid to do and that everyone should support them and not jeopardize people's jobs regardless of the significance of it (Tr. 214).

CX 8 is a letter to the editor in which Ruud complained to Chris Jensen upon his return from the May 11th hearing (Tr. 216).

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Exhibit 117 at 1160 and 61 contains "The Legend of Casey Ruud." Ruud supplied this to Chris Jensen because he thought that Dennis McCain wrote the article. Ruud was never contacted further concerning his complaint (Tr. 217).

Ruud was notified around December 17 or 19, 1987 that the funding for BWIP was ending. On December 18, a Friday, Harry Tuthill requested that another certified lead auditor go to N-

Reactor. Although this position at N-Reactor was on a temporary work order basis, it could ultimately turn into a permanent job. At the meeting, no one accepted the job. Ruud wanted to discuss the opportunity with his family. On Monday, December 21, Ruud received a phone call from his brother, John Ruud, who was the acting audits manager for BWIP. John Ruud had just left a meeting with Roger Johnson, who had told him that they needed to find a volunteer or someone would have to be appointed. John Ruud told Casey Ruud that, if he were interested, he needed to call Roger Johnson immediately. Casey Ruud called Roger Johnson around 8:45 to 8:50 a.m. and told Johnson that he was interested in accepting the temporary auditor job. Johnson told Casey Ruud that he was not sure if there was a need for anyone at that time. During the conversation, Johnson stated that, if because of Ruud's notoriety with the subcommittee, other managers did not want to hire him, then that was "too bad." Ruud told Johnson that he believed that he deserved an opportunity like other workers and that he was qualified and ready to work. Johnson said that he would look into it and get back with him. Also, during that conversation, Ruud was told that another offsite place was hiring and that he should deliver his resume by noon that morning (Tr. 217-20).

At 8:55 a.m., Ruud called Bob Fell, the manager at N-Reactor, who said that he had an opening and that he was waiting for Roger Johnson to tell him who would be selected. At that time, Ruud realized that there was a problem. He then called Roger Johnson's boss, Phil Bourne, and left a message to return his call (Tr. 221-2).

Ruud went to the site to collect his resume. At that time, Phil Dahlberg, Ruud's office mate, told Ruud that he had just been talked into accepting the auditor job at N-Reactor at about 10:30 a.m. (Tr. 222).

The two individuals selected, Dahlberg and Dorsey, were certified lead auditors. Ruud was the certified trainer for all of the auditors for the BWIP Project (Tr. 222-3).

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At the end of January, Ruud received a layoff letter. At that time, Ruud applied for a quality assurance engineering position in the processing plants and a welding engineer position in the Fast Flux Test Facility. At the time when Ruud applied for the QA engineer position, he was aware that there were several jobs available on the job posting. At that time, Ruud was a senior engineer, and he was applying for a senior-engineer-level position. This would not have been a promotion for Ruud. Ruud was interviewed by Gelman for the position.

In his testimony before the subcommittee, Ruud severely criticized the performance of Gelman in his position of Director of Quality Assurance (Tr. 223-30).

Gelman rated Ruud eighth out of 40 people who applied for

the QA engineer position. He did not get a job. No one indicated to Ruud that he lacked the minimum qualifications for the job, that a bachelor's degree in science was a requirement for the job, or that Ruud was not qualified for the job that he was performing (Tr. 230-1).

Ruud using the outplacement service, sent out 20-40 job applications, but he was not offered a job anywhere within Westinghouse (Tr. 231-2).

Ruud filed a complaint with the Department of Labor in February 1988, and Ruud was interviewed by a Department of Labor investigator in April (Tr. 232).

Ruud complained to Jeff Hodges, the staff investigator for Chairman Dingell, that he had been retaliated against by not receiving jobs that he had applied for. Jim Simpkin, another whistleblower, also complained that he had been retaliated against by Westinghouse. Ruud did not know Simpkin before Ruud was contacted by the Congressional Committee in October of 1986 (Tr. 233).

On May 11, 1988, Ruud, Simpkin and Hnatio testified that they had been harassed and retaliated against. Other individuals who testified were Joseph Salgado, an under secretary at the time; Mike Lawrence, the manager of the Richland office; Bill Jacobi, President of Westinghouse; Joe Wise, Chief Counsel; and Phil Bourne, Manager of Quality Assurance (Tr. 237-8).

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At the hearing, Ruud relayed to the subcommittee the comment, "if because of my notoriety for working with the subcommittee, other managers didn't want to hire me, that's too bad." Ruud felt that Johnson had discriminated against him. At the time of the hearing, Johnson was in the position of Manager of Employee Concerns for Hanford (Tr. 238-9).

At the hearing, Jacobi stated that there was an investigator from the Department of Labor investigating the charges and that Jacobi would comply with the final ruling (Tr. 239).

Some time in May, there was a meeting between Ruud, Ruud's attorney, Joe Wise, Jim Cassady and Larry McCormack (Tr. 241).

CX 109 is a chronology that Ruud prepared on June 22, 1988 for Jeff Hodges regarding the negotiations that Ruud was having with Westinghouse subsequent to the hearing (Tr. 242-3).

CX 34 is a letter to Randall Zuke from Joseph Wise, General Counsel for Westinghouse, dated May 23, 1988. Ruud understood from the proposal that, if he agreed to accept one of the jobs offered him, then he could not speak about Westinghouse issues at any time in the future. No one explained to Ruud that he would also be required to dismiss his Department of Labor claim or waive any other claims he had against Westinghouse (Tr. 244-5).

CX 36 is a letter to Wise in which Ruud stated that he understood that, if he accepted the job offer, he did not waive his Department of Labor claim. In joint meetings with Cassady, Wise and McCormack, Ruud was told he would have to waive his rights in order to get one of the jobs (Tr. 246).

Ruud had a meeting with Whiting in which Whiting said that he thought that Ruud and Simpkin had been treated unfairly and that Whiting would like to see things turned around. Whiting suggested a college education and a return to work, possibly at a later time. Ruud stressed that he was interested in continuing to work for Westinghouse because, with his experience, he could make a contribution (Tr. 250-2).

At the meetings prior to those with Whiting,

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Westinghouse wanted Ruud to be quiet and not publicly raise any more safety and environmental issues concerning Westinghouse and Hanford. Ruud told them that his goal was to try to work with them to try to fix those problems (Tr. 253-4).

Whiting's proposal was approximately an \$80,000 cash settlement, three to four years of working and attending a university, and then a possible return after that. Ruud was excited about the proposal. Whiting suggested that Ruud make the proposal to Cassady and also contact Chairman Dingell's staff so that they could provide positive support of the proposal. Ruud called Barrett, the Chief of Staff for Chairman Dingell, and relayed what Whiting had stated (Tr. 255)

Ruud and Simpkin met with Cassady and McCormack to present the proposal made by Whiting. Cassady and McCormack responded that they needed to run it through their system, including Jacobi, and that they would get back with him. Ruud received a response late that evening that Westinghouse would not accept it. Cassady said they did not want Mr Ruud to go public. Ruud told him that it was clear by the number of discussions they had had that they were not operating in good faith and that the public needed to hear that (Tr. 256-8).

Ruud scheduled a press conference for 10:00 a.m. on May 29. Westinghouse was told of the press conference. Cassady told Ruud that Westinghouse was a very large corporation that had a lot of means by which defend itself, and that they would also make sure that the subcommittee understood that Ruud and Simpkin were misrepresenting the subcommittee also (Tr. 258-9).

At around 11:45 p.m. that evening, Ruud received a call from the Seattle newspaper stating that the paper had just received a faxed press release from Westinghouse (CX 37). The fifth paragraph states, "To resolve Ruud's concerns and to settle his claims, Westinghouse offered him a choice of two positions, one is a quality control surveillance engineer at N-Reactor, and the other is a technical instructor in industrial and personal safety." On the next page it says, "Additionally, Ruud was

offered a six percent salary increase and back pay for the time he was unemployed." As of the time of this press release, May 30 or 31, Westinghouse had not offered Ruud back pay, but he

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had indicated that he would accept one of the positions. As of May 31, Westinghouse had not made an offer of back pay to Ruud. In the last paragraph, CX 37 states, "Westinghouse offered to have a third party that specializes in settling disputes resolve its financial differences with Ruud and Simpkin, and they rejected this offer." Ruud confirmed that he disagreed with employing an independent arbitrator. The press release further stated, "Subsequently, Westinghouse turned down a counter-offer that would have cost the company approximately \$250,000 for each individual. Ruud denies a counter-offer involving \$250,000" (Tr. 259-62).

Ruud received a letter from Gordon Wilson of the Department of Labor in Seattle stating that Ruud had rejected Westinghouse's offer for a job and back pay and that D.O.L. had ruled in his favor to the effect that Ruud was wrongfully terminated. Ruud immediately called Wilson and subsequently sent him information to reflect that the information in the press release was inaccurate (Tr. 262-3).

CX 38 is a letter dated May 31, 1988 to the U.S. Department of Labor from J. H. Hammond stating that Westinghouse Hanford Company (WHC) made an offer of reinstatement to Ruud, including lost wages. Ruud denies that WHC had made an offer and that he had refused such an offer (Tr. 264-5).

CX 44 is a letter dated June 1, 1988 to Westinghouse from Wilson which stated that Ruud had been wrongfully terminated (Tr. 265-6).

CX 47 is a letter from Wilson to James Hammond which stated, "Since our office has been outside these negotiations between your representatives and Ruud, and both you and Ruud have stated to me by telephone that the offer of re-employment and back wages was tendered and rejected, we plan no further action in this matter." Ruud denies communicating to Wilson that he had rejected an offer of back wages or re-employment (Tr. 267).

CX 48 is a "Priority Message to: All Employees; From: W. M. Jacobi, President" dated June 3. In this memorandum Jacobi stated that Ruud had been offered a job comparable to his former position and back pay and that negotiations had broken off when Ruud and Simpkin wanted large cash

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settlements rather than continued employment. Ruud denies these allegations (Tr. 267-9).

CX 39 is a two-page article entitled, "Westinghouse Whistleblowers in Word War: Jacobi and Ex-Inspector Trade Charges". It states, "Westinghouse officials paint a picture of two extortionists threatening to launch a media campaign to

tarnish Westinghouse's image unless the company pays them at least \$350,000 each." Ruud denies this. He states, that by threatening to have a press conference, his intent was to prompt negotiations in good faith (Tr. 269-71).

Ruud had a meeting with Mike Carrol, a branch chief or director of quality assurance for the Department of Energy, Richland office prior to testifying before Congress. Carrol discussed the negative aspects of testifying before Congress. First, the Hanford site could not tolerate someone having oversight of how they perform their function, and, second, many people high up in D.O.E. believed Lawrence was a potential presidential candidate-type person, and they wanted to defend his credibility. Carrol said that, if Ruud did not testify before Congress, he would be hailed within D.O.E. as a savior, and that, after it all blew over in about two years, he would get a nice corner office in the federal building and a high-paying consultant job for the rest of his life. On the other hand, if he did testify, he would be viewed very negatively within the Tri-Cities area, and there is probably nothing that D.O.E. could do to protect him or his family from harm (Tr. 274-6).

In mid-June, Ruud, Hutton (Ruud's new attorney), and representatives of WHC met. WHC indicated that it desired that the terms of the agreement remain confidential and that it would pay him on a periodic basis. To ensure that Ruud would not breach the confidentiality requirement, he would not receive forthcoming monies if he did not honor the agreement. WHC also wanted to ensure that Ruud would not discuss any issues related to WHC or its operation of the Hanford site (Tr. 277-8).

At the time when the negotiations broke down, it was clear that Congress would not provide any support to Ruud. A Congressional staff member told Ruud that WHC had communicated with Congress that it had made a fair settlement offer and that Ruud had attempted to exploit Congress to pressure them and extort large sums of money from Westinghouse (Tr. 280).

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During the negotiations, Ruud wanted to be assured that WHC would not be able to negatively influence Ruud's employment elsewhere. McCormack assured Ruud that WHC would not do anything to get in the way of his future employment. At the time of the agreement, Ruud did not have any indication that WHC was not going to follow the terms of the settlement. Subsequently, Ruud accepted a job in the nuclear industry in South Carolina and relocated his family there. If he had known that Westinghouse was going to interfere with his employment in South Carolina or anywhere else in the future, he would not have signed the agreement. Nor would Ruud have signed the agreement if he had known that Westinghouse's position was that only Ruud would be bound by the terms of the agreement but that they could violate the terms if it were in their best interest (Tr. 280-5).

CX 57 is a settlement agreement dated July 25, 1988. Paragraph 7 provides that, "Ruud agrees not to make further additional remarks or comments either verbally or in writing concerning his employment at Westinghouse or concerning the safety operations at Westinghouse to anyone; provided that if Ruud is subpoenaed by a court, administrative body or a Congressional Committee or Subcommittee or similar entity under force of law, then the parties agree that Ruud may testify regarding his employment at Westinghouse or concerning the safety of operations at Westinghouse." At each of the meetings, Westinghouse requested that the above language be included in the final agreement. The purpose of section 6 was to ensure that WHC did nothing to negatively affect Ruud's future employment (Tr. 286-9).

CX 60 is a faxed copy of the settlement agreement as modified on August 8, 1988. It was Ruud's understanding that someone in DOE had objected and demanded that the "confidentiality clause" be revised. At no time did Ruud insist that the confidentiality provisions be removed, nor did he share the agreement with anyone other than his wife and his attorney (Tr. 289-91).

CX 63 is a letter dated September 1, 1988 from Larry McCormack to E. E. Pride, Chief Counsel, Office of the Chief Counsel at the U.S. Department of Energy. Violation of the confidentiality part of the agreement in itself did not concern Ruud except insofar as it indicated WHC's willingness to violate other parts of the agreement (Tr.

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291-3).

During the time that Ruud was employed at Westinghouse and was engaged in settlement negotiations, Ruud became aware that his telephone had been wiretapped. He read in the newspaper that Gary Leckvold, who worked in the Safeguards and Security Division of WHC, had made those allegations. Ruud supplied information to the Inspector General's office concerning the wiretapping incident. Ruud has seen evidence that WHC had access to wiretap and other surveillance equipment. If he had been aware that WHC had been involved in wiretapping during the settlement negotiations, Ruud would not have signed an agreement with WHC (Tr. 293-5).

Ruud was hired by RI-TECH in South Carolina as an instructional technologist to develop and instruct in the environmental regulations. The President of RI-TECH said that he expected the duration of Ruud's employment would be at least five years. The five-year period prediction depended on good performance and the ability to produce good quality work. Subsequent to Ruud's employment at RI-TECH, he became aware that Wise and McCormack were employed at the Savannah River site and that Jacobi was in charge of the Gold Coast School for Environmental Excellence, for which Ruud was producing two of the technical training modules (Tr. 296-7).

An article from a Northwest newspaper indicated that Ruud was working at the Savannah River site. As soon as it came to the attention of Westinghouse Savannah River Company management, Ruud was removed as the instructor for the classes he was preparing. Ruud was also not allowed access to the site unless he was escorted by a Westinghouse employee. Bill Howard, Ruud's intermediate supervisor, told Ruud that the Chief Counsel at Savannah River, Wise, issued the order not allowing Ruud on site. Ruud's boss at RI-TECH told Ruud that it was clear that this was because Ruud was a whistleblower at Hanford and that there was nothing he could do about it, because, if he pushed it, they would go after RI-TECH's whole contract (Tr. 298-300).

Jeff Hodges of Chairman Dingell's subcommittee interviewed Ruud regarding retaliatory problems Ruud was having at the Savannah River site. Hodges said that it was clear to him that Ruud had been retaliated against because he was a whistleblower at Hanford (Tr. 301).

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Ruud was performing services directly for the Department of Energy at Savannah River through a Westinghouse contract when he was told that he had five minutes to remove himself from the site or they were going to send the armed guards to take him away. Ruud stated that Wise had notified the guards that he should be removed from the site. When Ruud had run into Wise the previous day in the hallway, Wise had asked Ruud why he was still on the site (Tr. 301-2).

After Ruud had been laid off, he realized that his career was being crushed, that everything he had worked for had come to an end, and that he could no longer be a contributor. This realization had a tremendous effect on him as well as on his family. Ruud felt a lot of stress anxiety, and heart palpitations and had difficulty sleeping. During the time at WHC when McGillicuddy had been behaving as he did, Ruud had felt ill and had a hard time being motivated (Tr. 302-3).

Currently, Ruud's salary with the Department of Energy is around \$53,000. If Ruud were not on special assignment, but continued to be employed with the Washington State Department of Ecology, his salary would be somewhere between \$38,000 and \$40,000. If his one-year appointment is not extended, he will revert to the lower salary with the state. Ruud has no assurance of any future employment with the Department of Energy. If reinstatement were ordered by D.O.L. to employment with Westinghouse Hanford Company, Ruud would accept it. Ruud believes that he would be entitled to receive a staff engineer level position (Tr. 304-5).

In RX 55 (Ruud's recollection of the statement made by Johnson when he applied for the temporary position at N-Reactor), Ruud stated, "During this conversation, he said that he was not going to treat me any different from anyone else because of my testifying before Congress, and if I posted for jobs and was

turned down because of my notoriety, then that would just be too bad." In RX 25, page 8, Ruud stated, "After I had verified the position opening on 12-21-87 in the a.m., I told Roger Johnson that I could understand that the company didn't want me at the N-Reactor because of my testimony. If that was the case, I should be given consideration for another less critical position." Ruud continued, "He said he had no intention of doing anything

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special for me, and if managers decided because of my involvement with the subcommittee not to select me for other positions, that's just too bad." Ruud does not see a difference between saying that Johnson would not do anything special for him and saying that he would not treat him any differently (Tr. 330-7).

In CX 9 (now CX 10), page 516, Ruud stated that he had received from Bechtel Power Corporation a formal engineering training certification program consisting of hundreds of hours of classroom study time. Ruud was referring to the Quality Control of Field Engineering course (Tr. 343-6).

Ruud became involved with the Governor Booth Gardner incident ("sign incident") as being responsible to ensure that it was resolved (Tr. 348).

In RX 58, Ruud stated that, on November 12, 1986, he was "Notified that I was being transferred to the Basalt Waste Isolation Project (BWIP), because the director of QA wanted me out of the weapons program." In April 1988, Ruud was quoted in the *Tri-Cities Herald* as saying that he was transferred to BWIP after blowing the whistle at the two plutonium production plants." However, Ruud requested the transfer to BWIP. Ruud's transfer to BWIP happened when Ruud was employed by Rockwell. He also got the raise while still employed by Rockwell, not WHC (Tr. 349-53).

The stop work order for drilling was in effect before Ruud testified before Congress in October of 1987 (Tr. 353-4). Between October 1986 and October 1987, when Ruud testified before Congress, Ruud had communications with staff members of the subcommittee. At that time, he was at BWIP and no longer in the 200 area. Ruud did have to go back to the 200 area to close out some audits that remained after he was transferred to BWIP. By January 1987, Ruud was no longer going out to the 200 area. Ruud may have seen some reports done by other auditors identifying violations in the 200 area (Tr. 354-7).

Ruud is not aware that the Special Nuclear Materials Audit that he testified about in Congress was closed out. CX 107 and CX 108 are audit findings in which pages were missing from the exhibits (Tr. 358-62).

Ruud testified before Congress in October 1987 about

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the Burial Ground Audit, the Specialist Nuclear Materials Audit,

the Design Control Audit and other audits he performed at the BWIP facility (Tr. 362-3).

CX 120 is an instance where Ruud stated that he was under pressure to close out an audit finding. Above Cole's signature it states, "I therefore respectfully request that you close this finding." There is also a handwritten note to Ruud from John Baker saying, "I suggest we close" (Tr. 364-5).

RX 60 is a document that Ruud wrote in reference to his experiences at Rockwell and Westinghouse. The entry for September-October 1987 states, "intimidated or harassed by management for refusing to cover up problems within the BWIP program." RX 61 is a note of a telephone conversation that Ruud had with Jeff Hodges on September 23, 1987, in which Ruud stated that he was not experiencing any difficulties at the present time due to his previous involvement with the subcommittee. Ruud explained that at that time he was unaware of the difficulties generated by testifying before the subcommittee (Tr. 366-9).

RX 16 is a "Don't Say It, Write It" memo dated November 6, 1987 from Blaine McGillicuddy. Ruud denies receiving it (Tr. 370-1).

Ruud may have audited some contracts that were originally let by WHC (Tr. 372).

Ruud is not sure whether a longer commute was a reason he wanted to think about the temporary assignment. A factor would have been that Ruud was concerned that choosing the temporary assignment might preclude other opportunities (Tr. 373-4).

On the morning of December 21, Ruud returned his brother's phone call. Ruud then called Johnson, and Johnson said that he was not sure if he had a need for a volunteer. Ruud recalls hearing that Johnson had a need for a volunteer. Ruud recalls that he met with Dahlberg around 11:30 that day (Tr. 374-81).

After speaking with his brother on December 21, Ruud called Phil Bourne, the Manager of Quality Assurance for Westinghouse Hanford Company, who was Roger Johnson's boss.

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Bourne returned Ruud's call later that day. Ruud told Bourne that it was clear to him, based on his and his brother's discussions with Roger Johnson and Ruud's discussions with Fell and Dahlberg, that Roger Johnson was trying to make sure that Ruud did not get employment out there. Ruud also told Bourne that, if he felt that N-Reactor was too sensitive a position for him to have, he should be given a fair shot at other positions (Tr. 391-3).

In RX 55 and RX 25, Ruud did not state that Johnson told him, "If because of your notoriety, other managers wouldn't hire you, that's just too bad" (Tr. 393-5).

In CX 9 (now CX 10), page 36, Ruud states that, "Another individual, who was a manager of quality assurance at Rockwell was removed (Cole), and when I asked the then-head of QA for the Richland DOE office why they put an individual in his place with absolutely no QA experience (Gelman) his statement was that, 'This manager was replaced because he was so bad that any change was a good change.'" Ruud continued saying, "But now Westinghouse has taken that individual (Cole) that was replaced and put him in charge of all the audits for the whole Hanford reservation." Ruud responded affirmatively to Wyden's question, "So someone who is truly incompetent, someone that you and everyone else has identified as truly incompetent is in charge of all the audits now at the reservation?" (Tr. 396-9).

CX 9 (now CX 10), page 510, of Ruud's Congressional testimony refers to Ruud's issuing a formal letter to Gelman and John Baker's denouncing the meeting minutes. Ruud did not send the letter to the other committee members or to anyone higher up (Tr. 400-2).

In February 1988, Gelman interviewed Ruud as well as 40 other applicants for a position as a quality assurance engineer. Ruud may or may not have known the qualifications of the persons selected (Tr. 402-6).

RX 62 is a series of questions and answers apparently coaching Ruud on his testimony before Congress (Tr. 407-10).

RX 63 is a settlement letter written by Randy Zuke to Joe Wise and Jim Cassady stating that Ruud and Simpkin each will be willing to settle their cases for an amount between \$350,000 and \$450,000, plus attorney's fees. On page 1 of

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RX 63, the first issue stated is the question of future employment. Ruud and Simpkin stated that they could no longer pursue a career at the Hanford facility (Tr. 410-2).

CX 109 is Ruud's recollection of settlement negotiations with WHC as of June 22, 1988 (Tr. 413).

On page 2 of CX 109 Ruud referred to a telephone conversation that he had had with Cassady on May 27, 1988. Cassady said that Westinghouse wanted to bring in an arbitrator, but that they would have to sign a binding agreement that would prevent public disclosure or appeal. They said that, if Ruud accepted this proposal, he did not need to take either of the jobs and he would be given back pay from the time he was terminated (Tr. 414-5).

RX 34 is a memorandum for the file written by Area Director Gordon Wilson dated May 31, 1988. Ruud had told him that he had rejected Westinghouse's offer of a job or back pay. There was also a discussion about WHC's not negotiating in good faith. Ruud does not believe that Wilson's recording of the conversation was accurate (Tr. 415-6).

The purpose of Ruud's letter to Hodges dated June 22, 1988 (CX 109) was to give him Ruud's side of the settlement negotiations with WHC. Ruud was trying to lay out the facts and inform Hodges that Westinghouse was attempting to keep Ruud quiet (Tr. 417).

At the press conference of Ruud and Simpkin on June 1, 1988, Ruud stated that the figures that Westinghouse gave the press were accurate figures (Tr. 420).

Ruud first spoke with Carpenter of the Government Accountability Project sometime in April or May 1988. Ruud described to him the events which had transpired at Hanford. Ruud hired Carpenter in June or July 1988. Ruud understood that the Government Accountability Project had experience representing people who claimed to be whistleblowers other than at Hanford (Tr. 421-7).

Ruud also hired James Hutton, from Yakima, Washington as legal counsel in June 1988. Ruud hired counsel outside the Tri-Cities area because he wanted to find someone who would not be afraid to take on WHC and who had no ties to

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Westinghouse (Tr. 427-8).

CX 57 is the settlement agreement that Ruud and his wife signed with WHC Hanford Company on July 25, 1988. CX 60 is the document that modified the settlement agreement to take out the Department of Energy as a party and to change the confidentiality agreement. The modification of the confidentiality provision allowed Ruud to speak out publicly about WHC and Hanford, which Ruud has done. Ruud has not returned any cash payments made to him by WHC. Ruud is not sure that the settlement agreement terminated his Department of Labor proceeding. Ruud spoke with Ken Rosenbaum, a staff member of Representative Wyden. Rosenbaum was opposed to the confidentiality clause in the settlement agreement. Ruud did not give Rosenbaum a copy of the settlement agreement, and the only other copy of the settlement agreement, to Ruud's knowledge, was possessed by WHC. At the time, Hutton was working on revising the confidentiality clause (Tr. 429-37).

Ruud was employed by RI-TECH in South Carolina. RI-TECH hired Ruud but supplied his services to others. Westinghouse Savannah River Corporation issued a purchase order to RI-TECH for Ruud's services. The term of the purchase order was May 29, 1990 through December 28, 1990. While Ruud was working at the Savannah River site, he reported environmental and safety concerns (Tr. 439-42).

Ruud began work with RI-TECH in May 1990. His family moved to South Carolina in July 1990. In October of 1990, the sale of his house in Washington state fell through. In October of November of 1990, Ruud's wife and children moved back to

Kennewick, Washington while Ruud was still working for RI-TECH at the Savannah River site. In January of 1991, Ruud had a conversation with Henry Wiedrich, the then-president of RI-TECH, concerning his resignation. Ruud had a letter of resignation delivered to Wiedrich (Tr. 442-7).

Ruud does not know for a fact that he was the subject of wiretapping or other surveillance (Tr. 447-8).

Ruud has had contacts with Congress beginning in October 1986 and continuing through 1991. He took notes of some of those contacts, most of which were lost or stolen when he moved to South Carolina in July 1990. Ruud also kept notes of when he thought he was being improperly passed over for a temporary position at N-Reactor (Tr. 450-1).

RX 67 describes the qualifications, duties, and the

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responsibilities of the weld engineer position which Ruud applied for. He was interviewed by Robert McCord. Ruud's experience in welding consists of having been a welder and of inspecting welds. He developed welding procedures for several years and was offered a job as a weld engineer with Bechtel. Ruud does not have a degree in weld engineering or metallurgical engineering. Ruud has ten years minimum experience in the welding and joining of stainless steels for nuclear applications. Ruud does not have extensive working experience with electron beam and laser beam welding. He has used the pulse magnetic welding process. Ruud has only a sketchy knowledge of the ASME Code. He also stated that he has experience in designing weld joints (Tr. 452-6).

Ruud recalls telling the subcommittee during his testimony on May 11, 1988, that Bob Gelman was not qualified for his job (Tr. 457-8).

In reference to CX 109, Ruud understood the proposal to be that Westinghouse wanted to get a third party to arbitrate and come to a resolution. He was never offered his job back with back pay. In RX 34, Wilson's memo to the file dated June 4, 1988, Ruud denies that he told Wilson that he had rejected an offer of a job and back pay (Tr. 458-61).

Ruud moved his family to South Carolina in an attempt to start a new life. When he got the call from Simpkin's manager that she had been ordered to have them removed and ousted from the site because they were whistleblowers and there was nothing she could do about it, Ruud realized that his hopes of starting anew were destroyed (Tr. 461-3).

Tom Carpenter approached Ruud and asked him to write a sworn statement concerning the events that he testified to earlier about the taping. Ruud believes that it was for information that was requested by an inspector general regarding an investigation that the IG was performing (CX 132; Tr. 1153-4).

Ruud believes that he paid Hutton a percentage of his settlement. According to Ruud's deposition testimony, he thought it might have been \$5,000 (Tr. 1155-9).

B. Testimony of James L. Spracklen

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Spracklen is Director of Safeguard and Security for the U.S. Department of Energy (D.O.E.) in Richland. He has held this position for three years. Spracklen has been assigned to the safeguards and security for D.O.E. in Richland for the past twelve years. On October 31, 1990, Spracklen was either administrative officer or the branch chief for security operations (Tr. 578).

CX 85 was prepared by Spracklen as a direction to Hanford Patrol on how to secure some sensitive equipment that was made available to the Richland Police Department should the need arise for hostage negotiation purposes. The equipment was a hostage negotiation kit contained in an aluminum briefcase. It included a telephone set for the negotiator, a headset, a dial-up capability for the phone, a map light, a clock, and a throw phone, which is for the hostage taker to use in negotiating with the hostage negotiators. Spracklen does not recall whether the kit contained any listening devices. The kit was destroyed as a result of an Inspector General inspection into surveillance activity at Hanford. D.O.E. concluded that, although there was nothing illegal about the equipment, it would be best not to have it. Spracklen felt that the throw phone could be used as a listening device but that it would be a conspicuous piece of equipment. Because the kit contained a tape recorder, D.O.E. felt that it was not in keeping with the regulations and policy put forth after the Inspector General inspection, and, therefore, it was destroyed. There were two kits. Richland police had a need for one, which was kept in the Federal Building (Tr. 579-84).

Hanford Patrol is a function of WHC safeguards and security. Page two of the document is a separate document, not an attachment to the DSI. Page two is in reference to the patrol people ensuring that the briefcase is in the safe and that there is a proper sign-in-and-out register. Spracklen believes that the equipment may have been destroyed some time after August 16, 1991, when the sign in/sign out paragraph was deleted, but he is not sure (Tr. 585-9).

C. Testimony of James W. Simpkin

In 1978 Simpkin was employed at Hanford with UNC as an

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NDE Level 3 examiner, and, when Westinghouse took over, he was an NDE specialist. Early in 1987, Simpkin was assigned to the N-Reactor, and, when Westinghouse took over, he was transferred to 300 Area (Tr. 590-1). Simpkin met Casey Ruud on October 20, 1987 on his way to the Congressional hearings (Tr. 592). Simpkin's testimony before the subcommittee in October of 1987 involved different issues from those to which Ruud testified (Tr. 592).

After Simpkin testified before Congress on October 22, 1987, he complained to Congress of retaliation by Westinghouse. On May 11, 1988 a hearing was held concerning his allegations. After the May 11 hearing, Simpkin participated in negotiations with Westinghouse Hanford Company personnel concerning a possible settlement of his complaints against Westinghouse (Tr. 591-2).

Simpkin and Ruud jointly retained counsel after the May 11 hearing. Ruud was not present in the initial meeting with their counsel and representatives for Westinghouse, Wise and possibly Cassady or McCormack. This was the only meeting that Simpkin had with his initial counsel and representatives from Westinghouse. Simpkin engaged in subsequent negotiations without counsel where Ruud was present. Simpkin does not believe that he engaged in any negotiations after that first meeting in which Ruud was not present. Simpkin recalls two or three meetings, maybe more. He does not recall an offer to Ruud for reinstatement with back pay. Simpkin and Ruud had the same goal in the negotiations: if they were going to remain at Hanford, they should have meaningful jobs to help WHC to correct problems, rather than an adversarial relationship. WHC's primary concern was that Simpkin and Ruud not speak to the public on the issues. This was a pre-requisite to continue negotiations (Tr. 592-5).

At one point during the negotiations, it appeared that Ruud was not going to be offered a return to work. Their concern after the college education proposal fell through was how they were going to protect their jobs in the future. Simpkin was present when Ruud expressed his concerns concerning future employment. WHC representatives indicated that they would not interfere with their future employment. When negotiations came to an impasse, Simpkin quit his job (Tr. 596-8). Simpkin was technically never laid off by WHC but applied for a dismissal as part of a voluntary reduction in force (Tr. 617).

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Simpkin was at Ruud's house when Whiting called. Simpkin's house and left a message with Simpkin's wife to return the call. Simpkin returned the call from Ruud's house, and Whiting proposed that Westinghouse would pay him a salary as well as tuition for college, and he would be able to make a choice at the end of that time whether he would go to work for Westinghouse or whether he would choose to go somewhere else. The proposal was for Simpkin, but Ruud was not included. Simpkin proposed including Ruud in the proposal suggested by Whiting. Subsequently, Simpkin and Ruud had a meeting with WHC representatives in which Simpkin was put in the position of presenting the proposal himself. WHC

said it would get back to them. At each meeting with Westinghouse, Simpkin and Ruud were asked not to go to the press. At length, WHC representatives told them that too much money was involved, and the college education proposal did not sound like it would work (Tr. 599-602).

Subsequently, in a letter sent to his attorney, Simpkin was offered the same position that he had held but with some different managers (Tr. 602).

Simpkin signed a settlement agreement with Westinghouse on December 5, 1988. At the time, Simpkin and Ruud were represented by Hutton. Simpkin did not discuss the confidentiality provision with Hutton, leaving it to his attorney (Tr. 603-5).

CX 63 is a letter dated September 1, 1988 from McCormack to Pry concerning violations of the confidentiality provisions of the settlement agreement. Simpkin first became aware of McCormack's letter either the day of this hearing or the day preceding this hearing. Ruud had never showed his settlement agreement to Simpkin (Tr. 605-7).

Simpkin assisted Ruud in securing employment at Savannah River, South Carolina with RI-TECH. Prior to assisting Ruud, Simpkin discussed with his managers Simpkin's and Ruud's prior whistleblowing activities at Hanford. Simpkin discussed this with Margie Beckmeyer, Simpkin's boss, who was employed by Westinghouse Savannah River Company, and Henry Wiedrich, President of RI-TECH. Simpkin was forced to stop working at the Savannah River facility. Wiedrich told Simpkin that he and Ruud were removed because

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they were whistleblowers, and the Hanford thing had caught up with them (Tr. 608-10).

Simpkin held a press conference after an impasse was reached in 1988. Back pay was not an issue for Simpkin because he was employed by WHC at that point. Simpkin is a plaintiff along with Ruud in a South Carolina lawsuit against Westinghouse Savannah River Company, Joe Wise, Larry McCormack and Thomas Anderson. Simpkin liked the proposal that Whiting suggested (Tr. 611-5).

In 1988, Simpkin filed for bankruptcy (Tr. 615-6).

Simpkin was first employed by RI-TECH to perform services at the Westinghouse Savannah River site. At some point, he stopped performing services at the Savannah River site but continued to be employed by RI-TECH. After Simpkin stopped working at the Savannah River site (January of 1991), he worked in the Aiken, South Carolina office. He continued working for RI-TECH for approximately five years, finally being terminated on January 13, 1995 while working in Amarillo, Texas (Tr. 617-8).

D. Testimony of Larry McCormack

McCormack is currently employed by Westinghouse Savannah River Company (WSRC). He started working there during the transition after the company got the contract in late 1988. Prior to this, he was an attorney for Westinghouse Hanford Company (WHC), which employment began in November 1988 (Tr. 642).

McCormack first became aware of Casey Ruud during the first quarter of 1988, when he heard that WHC had to testify before a Congressional committee responding to allegations that Ruud that he had been retaliated against (Tr. 643).

In May of 1988, McCormack became involved in negotiations with Ruud concerning claims that he had against WHC. McCormack recalls that Ruud was offered back pay to the time when he had been laid off in February, and any other damages would be submitted to arbitration. McCormack believes that reinstatement to one of two jobs was offered at the same time as back pay (Tr. 643-5).

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CX 35 is a letter which McCormack wrote to clarify what he believed to be the then-state of negotiations between Ruud, Cassady and himself. CX 35 was written after the impasse was reached. McCormack does not recall receiving a response from Ruud to the letter. Wise had primary responsibility in the WHC legal office for negotiations with Ruud, but this responsibility was transferred to McCormack later (Tr. 645-6).

In July of 1988, Hutton contacted WHC concerning settlement. McCormack, Hutton, Ruud, and Jim Cassady met. Hutton stated that he wanted to resolve the differences between the parties and wanted to have a neutral letter of recommendation placed in Ruud's file in case there was contact by future employers. Westinghouse representatives said that they desired to have the terms and conditions of the settlement kept confidential. Hutton stated that his clients were willing to forego continuing comments in the media on the settlement (Tr. 646-9).

Ultimately, McCormack and Hutton came to an agreement on a settlement. Discussions with Hutton after the July 1988 meeting only involved dollar figures. McCormack contacted Gene Pride, the then-general counsel for the Department of Energy, for approval as required (Tr. 646-50).

RX 39 is a letter McCormack sent to Pride confirming a telephone conversation they had on July 15 concerning the proposed settlement with Ruud (Tr. 651).

CX 57 is the initial settlement agreement between and Mrs. Ruud and WHC reached on July 25, 1988. Hutton wrote the first draft of the settlement agreement. McCormack suggested some changes. Hutton drafted the sentence, "Ruud agrees not to

make further additional remarks or comments." McCormack took steps to make the payments to Ruud set out in paragraphs 4(A) and 4(B). McCormack submitted a neutral letter of recommendation for future employment to Hutton, which was eventually placed in Ruud's file (Tr. 652-4).

RX 41 is a letter from McCormack to Hutton accompanying the signed copy of the settlement agreement and enclosing a check for the \$55,000 payment (Tr. 654).

The neutral letter of reference, signed by Cassady and then by McCormack, was forwarded to Hammon, who was in

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charge of personnel records for the company. McCormack did not personally take steps to ensure that "negative comments, file memos or other documents with respect to Ruud's employment with Westinghouse shall be purged from his personnel file or files." McCormack notified Cassady that it was part of the agreement and that any negative comments should be removed from the file (Tr. 654-5).

McCormack stated that the original settlement agreement included the Department of Energy as a party, and it was forwarded to them for review and approval. The Department of Energy notified Westinghouse that it did not want to be a party to the agreement, did not want to sign the agreement, and wished to have the confidentiality agreement changed. McCormack called Hutton and asked if he would agree to those proposals, which he eventually did, and the clauses were amended (Tr. 655-6).

RX 68 is a letter dated August 8 to McCormack from Hutton enclosing the amended pages of the settlement agreement deleting the Department of Energy and changing the confidentiality section. McCormack and Hutton agreed to exchange only the pages of the settlement agreement affected by the changes (Tr. 656-7).

McCormack wrote a letter to Pride on September 1, 1988. Previously, McCormack had provided Pride with a copy of the settlement agreement. McCormack was required to submit a copy of the settlement agreement to DOE as part of their contractual requirement, and DOE was to be a signatory. McCormack learned that Congressman Wyden was requesting a copy of the document from D.O.E. It was McCormack's belief that release of the document by DOE to Congressman Wyden would violate the terms of the agreement (Tr. 657-9).

McCormack believes that Westinghouse intended to honor its commitments under the settlement agreement and has done so (Tr. 659-60).

While in South Carolina and since August 8, 1988, McCormack has not had contact with Ruud, nor has he taken any action with respect to Ruud (Tr. 660-2).

McCormack recalls that at some point in the negotiations, back pay was discussed with Simpkin and Ruud (Tr. 666).

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McCormack understood that, under the agreement, its terms could not be released to the public. In fact, at WHC's insistence, a liquidated damages provision was inserted (Tr. 673-4).

E. Testimony of William M. Jacobi

Jacobi received a bachelor's degree in chemical engineering from Syracuse University, a master's in chemical engineering from the University of Delaware, and a doctorate in chemical engineering from Syracuse University (Tr. 680-1).

In 1985, Jacobi led the team that competed for the Hanford consolidation contract and then came out in January of 1987 to lead first the transition team and then Westinghouse Hanford Company (WHC) as consolidator. The date of the consolidation was June 29, 1987, at which point Jacobi was President of WHC. Jacobi left in November of 1988 and went back to Westinghouse headquarters as Vice-President of Government Operations. He retired in 1991 (Tr. 681-2).

In October 1986 Jacobi was aware that there were newspaper articles written concerning audits that Casey Ruud had performed. Jacobi thought that the newspaper articles might be good for Westinghouse in the sense that it cast some serious aspersions on Rockwell's operations, and Westinghouse Electric in its proposal had made safety and its long experience in discipline in nuclear operations a key factor (Tr. 683-4).

Around the late 1970s or 1980 Congress passed the Nuclear Waste Policy Act, which established that the Department of Energy would take title to high level nuclear waste and would provide a repository for it. Three locations were to be studied as potential repository sites. One of the them was the volcanic tuft in Yucca Mountain, another was a salt bed in Deaf Smith County, Texas, and the third location was in the Hanford Reservation in the basalt that underlies the approximately 500 feet of gravel that is over the top of the site. The BWIP, the Basalt Waste Isolation Project, was designed to determine the properties and extent of the basalt, its permeability, the ground water

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flows, etc., and to evaluate whether it was a suitable site (Tr. 687-8).

After the May 1988 Congressional hearing, the Chairman of the committee gave a lecture that the Committee strongly desired

to see its informants continue in employment and be well treated. At that time, there were about 1,100 people working at BWIP that were affected by the shutdown of BWIP. All of the non exempt employees were put through a seniority control process, and all of the exempt employees were given notification that they would no longer have a job at BWIP as of a certain date. Ruud was one of the individuals affected. Ultimately, about 700 people left the payroll as a result of that action.

When Jacobi returned from the hearing, he asked Jim Cassady to see if some suitable employment could be found for Ruud elsewhere on the site. Jacobi recalls that Jim Cassady told him that he had identified two jobs, and Jacobi told him to make an offer (Tr. 689-90).

In reference to the settlement agreement, Jacobi was aware of the money that was paid and the confidentiality clause (Tr. 690-1).

F. Testimony of Joseph G. Wise

Wise has a bachelor's degree from Brigham Young University and a law degree from George Washington University. Wise began employment with Westinghouse Hanford Company (WHC) in 1974 as a contracts manager. In 1978 he went to work for Westinghouse Electric Corporation and returned to WHC as general counsel in December of 1986, when the consolidation took place. Wise became the general counsel for Westinghouse Savannah River Company (WSRC) on April 1, 1989, and that is his current position (Tr. 697-9).

Wise had worked for Westinghouse Electric Corporation on the preparation of the proposal for the Savannah River contract in May of 1988 (Tr. 699).

Wise had one meeting with Ruud, Simpkin and their attorney in May of 1988 to discuss settlement. They did not reach an agreement at that time. He did not participate in any other settlement negotiation meetings after that (Tr.

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699-700).

Larry McCormack, Wise's labor counsel, became involved in the settlement negotiations because Wise was out of town frequently (Tr. 700).

Wise had a telephone conversation with Hutton at the beginning of the settlement negotiations and an exchange of letters but did not have any face-to-face meetings with Hutton (Tr. 700-1).

Wise was aware that WHC had reached an agreement with and Mrs. Ruud but was not aware of the specific terms. Wise was generally aware that there was some kind of a dollar settlement,

an agreement to give a neutral recommendation, and a confidentiality provision in the agreement (Tr. 701).

Wise had no involvement in the drafting of the settlement agreement or making modifications to the agreement. He has not interfered with Ruud's employment, nor does he have any reason to believe that Westinghouse did not intend to abide by the terms of the agreement (Tr. 702).

Wise is currently the Secretary of WSRC (Tr. 703).

Wise was aware that Ruud was employed by a subcontractor of WSRC at the Savannah River site. Wise did nothing to prevent an extension of Ruud's contract for work at the Savannah River site, nor did he cause Ruud to be escorted from the Savannah River site (Tr. 703-4).

Wise does not recall a firm offer being made to Ruud at the settlement negotiation meeting he participated in. Wise had never been specifically authorized to make a settlement. Wise received an authorization to make an offer of employment through a couple of jobs that were available, but he does not recall the issue of back pay. Later, around June 6, Wise recalls that he discussed with McCormack the offer of reinstatement with back pay, but he did not discuss it at the time when Wise was personally involved in the negotiations. Wise remembers hearing that arbitration was proposed but not being at the meeting. Wise understood that Ruud wanted the neutral letter of recommendation for future employment without interference from Westinghouse (Tr. 705-7).

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Jacobi, who was the only person in the corporation who had the authority to authorize a settlement offer, did not specifically give Wise any authorization to offer a settlement (Tr. 708-9).

G. *Testimony of James G. Cassady*

Cassady is employed by Westinghouse Electronic Systems Group as the Vice-President of Human Resources. He began working for Westinghouse in 1960. Prior to his current job, which began in 1987, he was the Director of Human Resources (Tr. 126).

In the spring or early summer of 1988, Cassady became involved in negotiations with Ruud. Cassady does not remember back pay being offered to Ruud but recalls that Ruud was offered a return to work, which he does not recall Ruud accepting (Tr. 127-32).

At one point, an impasse in negotiations was reached, and

Ruud and Simpkin had scheduled a press conference. Cassady tried to discourage Ruud from having the press conference. Cassady only offered Ruud an opportunity to return to work as a settlement to his claim. Prior to that press conference, Westinghouse went public with a press release (Tr. 132-5).

Early in the negotiations, Ruud stated that he would like to return to school in addition to working for Westinghouse. Cassady does not recall Ruud expressing concern about Westinghouse interfering with his future employment in the nuclear industry (Tr. 127-44). Cassady does recall that Ruud was very concerned about having materials removed from his file. Cassady signed a neutral letter of reference for Ruud (Tr. 144-9).

There was a period when Ruud was not represented by counsel (Tr. 152).

In 1988, under the employment verification policy at WHC, the employment office would give to the inquirer only the dates the employee was hired and departed and his job title (Tr. 153).

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Cassady did not know the terms of the settlement agreement between WHC and Mr. and Mrs. Ruud. He has no knowledge that WHC did not intend to keep the settlement agreement at the time that it entered into it, nor is he aware that WHC has breached the settlement agreement (Tr. 154-6).

RX 12 is a publication that represented WHC's first day of increased responsibility for the Hanford site on June 29, 1987. WHC had been on the site for a number of years operating the Hanford Environmental Development Laboratory, which included the Fast Flux Test Facility. On June 29, 1987, WHC began operating the entire site under contract (Tr. 156-7).

On December 17, 1987 the Basalt Waste Isolation Project (BWIP) was notified that it would be shut down because Congress had ended funding. As a result, BWIP and another site were closed and were given 90 days to shut down. There had been speculation that BWIP might be shut down, but Westinghouse thought the decision would go the other way. They felt that this site represented a far better technical approach to characterization. There were 700 or 800 people affected by the shut down. The union contract governed the disposition of any union employees. Cassady issued a memo on January 4, 1988 setting forth the guidelines for the reduction in force of BWIP personnel. Guideline number 2 stopped the procedure in which employees could be moved between different departmental funding arrangements in order to give the BWIP employees priority for any job openings. The third guideline: "If you wish to make an offer to an employee, you must thoroughly document your selection process. Such offers must be reviewed and coordinated by the job placement center," was imposed because of EEO requirements. There was also a means by which employees could be temporarily

loaned by work order across funding programs. Loaning of employees could continue, but, if the person being loaned was funded by BWIP funding, employment could be terminated after the loan period (Tr. 157-64).

Cassady did not know Casey Ruud before these policies were initiated (Tr. 164).

RX 8 is the staff paper that was prepared to support management when it began notifying employees they would be laid off. The letters were sample letters to notify

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employees of the layoff (Tr. 165).

A job placement center was staffed to help laid-off employees procure other employment. Its purpose was to help individuals prepare resumes, develop interview skills, and do job searches. It would post open jobs for outside opportunities. In other words, it was an employment office (Tr. 165-6).

RX 12 is an article entitled, "We Don't Shoot the Messenger Here." WHC was trying to promote the notion of open and candid communications and appropriate employee relations, a management model. This is the model given to employees if they had a concern. Cassady was not aware of any regulations that required the employer to inform the employees, that if they had a serious concern, they had a right to go to the Department of Energy. The model only referred to internal procedures (Tr. 168-71).

Cassady first came to Hanford in March 1987. As of January 1988, he did not know Casey Ruud (Tr. 171-173).

Prior to January 4, 1988, Cassady had not been informed that assurances had been made to the Congressional Committee by representatives at the under secretary level in a Congressional hearing that Casey Ruud and Jim Simpkin would not be retaliated against because of their testimony (Tr. 173).

Mary Walker was a DOE manager of environmental safety. Bourne came to talk to Cassady in December 1987 specifically about Ruud. Bourne was concerned that Ruud's job was in jeopardy and that he might be laid off. Cassady felt that they had to follow the guidelines and see what would happen (Tr. 173-4).

Cassady vaguely recalls a controversy arising around Bourne's statements that were allegedly made to the press to the effect that internal audits were of no concern to the public (Tr. 175).

Cassady believes that only a small number of former BWIP employees were able to remain with Westinghouse (Tr. 176-7).

Cassady does not recall a company policy that required quality assurance auditors or engineers to have a B. S.

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Degree in science, math or engineering or one of the related fields (Tr. 178-9). According to his recollection, the subject was debated internally, but the policy that prevailed required either a degree or equivalent experience (Tr. 178-9).

Bourne's conversation with Cassady about Ruud took place after the decision to "draw the circle around" BWIP had been made. A second wave of layoffs occurred in February 1988 involving approximately 1,200 employees. Because a large number of people were laid off, the guidelines had to be applied (Tr. 182-4).

Cassady was aware of an investigation by Hodges in connection with Ruud's not being offered a job. Cassady did not participate in putting together the testimony that Jacobi, Wise and Bourne were preparing to give before Congress on May 11 concerning retaliation charges (Tr. 185).

H. *Testimony of Chris W. Jensen*

Jensen is employed by Westinghouse Hanford Company (WHC) as the manager of the business conduct office. Jensen has management and oversight responsibility for litigation support, company internal investigations, and the undertaking of the business ethics program for WHC. Jensen reports to Sandra Marino, the general counsel (Tr. 466).

When Jensen went to work for Rockwell in 1986, he was with the Safeguard and Security Division as a security specialist. The safeguard and security division included the Hanford Patrol, which is the law enforcement and uniform security force for Hanford. The division that Jensen was in was the security investigations office, which primarily handled security procedure compliance matters and protection of classified information. There was also a security audits group, which accomplished the personnel security operations background investigations for new-hire employees (Tr. 469).

In 1987 Jensen became a WHC employee. As such, he held a number of positions within the safeguard and security department. Jensen was first assigned to the law department directly in December of 1990. Prior to December of 1990, Jensen performed certain investigations, such as personnel

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or internal company-type investigations for the General Counsel's Office. Prior to being assigned to the Law Department, Jensen was a member of the Safeguard and Security Department (Tr. 471-2).

For the last two years, WHC has placed more emphasis on business ethics. Jensen believes that he has had quite a

bit of training on the job in ethics as a result of his career in law enforcement, security and the General Counsel's office (Tr. 473).

Jensen was involved with an investigation of Ruud's complaints to the Department of Labor. In January of 1990 Jensen testified in an administrative review hearing regarding Gary Leckvold, in which Jensen related the "sign incident" involving the Governor of Washington. Jensen was tasked to investigate what happened to some 16 or 18 historical cards that articulated the radiation survey checks that the radiation protection people performed at the time. It was Jensen's impression that Ruud may have expressed some concern about the control of radiation survey cards, but he does not remember Ruud's particular involvement (Tr. 480-6).

Jensen does not recall trying to take photographs from Ruud (Tr. 487-8).

Jensen investigated whistleblowers, including Ruud, Bricker, Leckvold, Oglsbee, Simpkin, and Brown. Given his current position in the Law Department, Jensen would probably be aware of every whistleblower who has filed a complaint since 1986 (Tr. 489-94).

In his investigation of Gary Leckvold, Jensen found that some of Leckvold's complaints concerning protection of classified information and misuse of company time and equipment were valid (Tr. 494-5). Some of Jensen's investigations of other whistleblowers demonstrated the validity of their concerns and others did not (Tr. 502-4).

Jensen was aware that, during Walker's investigation of Ruud in 1986, Walker had set up a complete room to analyze data that had been developed in connection with his investigations (Tr. 508-10). Jensen worked for Walker after consolidation with Westinghouse in 1987 for a short period

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of time (Tr. 510-2).

Jensen helped to prepare WHC's defense at the May 11 hearing through helping prepare the testimony of Dr. Jacobi, Wise and Bourne. Jensen's investigation of Ruud's complaints was limited to the Department of Labor complaints and what Ruud voiced at the Congressional hearings. Jensen does not recall specifically seeing any documents gathered by Walker (Tr. 512-4).

Jensen summarized the findings of his investigation on the four issues listed. Issue 2 alleges that Ruud was sent to BWIP even though transfer documents were not completed as required by company policy. Jensen found no retaliation in this action, just that the paperwork had not caught up. Issue 1 alleges that Ruud was transferred to the Basalt Waste Isolation Project (BWIP) because the Director of Quality Assurance wanted him out of the weapons program. Jensen concluded that Ruud had applied for

both of the positions. He was selected for one of the positions and accepted the position voluntarily. Jensen found that Ruud was not transferred because someone wanted him out of the program. Issue 3 alleges that Ruud was harassed by management because he refused to cover up problems with the BWIP quality assurance program. Jensen found no evidence of any specific cover-up; in other words, his finding was inconclusive. Issue 4 alleges that Ruud was the only volunteer for a temporary auditor's job at the 100 N Area, and management pleaded with Dahlberg to take the assignment. Jensen's conclusion was that management had offered Dahlberg the job on two separate occasions. On the second offering, Dahlberg accepted. Jensen concluded that Dahlberg accepted the position prior to Ruud's making his interest known. In reaching this conclusion, Jensen relied at least in part on a chronology of events supplied by Johnson, among other pieces of evidence, including an interview of Dahlberg, which was not attached to the report until later (Tr. 517-23).

In investigating Issue 4, Jensen looked at whether Dahlberg was importuned to take the job and whether Ruud had volunteered for a temporary job prior to Dahlberg's being asked to take that job (Tr. 524-5).

Jensen relied primarily on the testimony of the individual witnesses, and the only witness that felt that he

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had asked for the job at N-Reactor first was Ruud. Dahlberg said that Ruud called to apply for the job at 7:30 (Tr. 538-44).

Tuthill refused to talk to Jensen unless he was paid. Wise made the determination that Tuthill would not be paid for his time. Thus, he made no statement (Tr. 546).

McGillicuddy admitted that he had written the statement, "I know it's tough being an authority," on a piece of paper. He later apologized for the comment and expressed that he did not harbor ill feelings toward Ruud. Pfluger was present during some of the interviews, and Pfluger felt that McGillicuddy was not holding a grudge, and that this conduct was just a result of McGillicuddy's personality and typical of his behavior (Tr. 547-53).

Jensen interviewed Donovan Dorsey, who stated that Ruud had told him that he had applied to Johnson for the position at N-Reactor before it was given to Dahlberg. CX 33, page 2, states "Phone conversation with Donovan Dorsey," who said "Viens did tell him in so many words that Roger Johnson wanted someone other than Casey for N job. Dorsey did not recall Johnson's exact words, but they were something like, 'Find another volunteer and fast'" (Tr. 556-7).

In notes from an interview with Viens, Jensen recorded that

Viens "Did not tell Dorsey Johnson stated he [Viens] didn't want Ruud for job as stated in page 7 of Subcommittee Memorandum" (Tr. 558). Jensen did not put Dorsey's statement concerning Ruud in his report (Tr. 559-60).

If Jensen had been aware that McGillicuddy had been keeping notes (CX 122), Jensen would have asked for them and made them part of the file, but he was not aware of them (Tr. 561-2).

Jensen felt that his investigations of Ruud's allegations were impartial (Tr. 566-8).

I. *Testimony of Philip Barry Bourne*

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Bourne has a B.S. degree in electrical engineering from Duke University, and he was a certified lead auditor. Bourne began work with Westinghouse Hanford Company (WHC) in 1974 as a consulting engineer to the Manager of Quality Assurance. He was promoted to Manager of Quality Assurance in 1979 and remained in that position through the consolidation, when Westinghouse took over the entire management of the site that Rockwell UN has been performing.

At that time, he had all of the site quality assurance people reporting to him. He held that position until 1990 and retired in 1992 (Tr. 729-31).

Prior to the consolidation, WHC required that new hires in the Quality Assurance Department be graduate engineers or have a four-year graduate degree in an associated technical field, i.e., a degree (B.S. degree) in electrical, mechanical or civil engineering. An equivalent amount of experience in related fields could be substituted for the education. WHC required a two-for-one year substitution. Experience as a quality assurance auditor would not necessarily be equivalent (Tr. 731-3).

WHC wanted engineers with a technical degree because it felt that quality assurance was an ancillary part of the operations, and that employees with technical backgrounds who were aware of the technology made much better quality assurance engineers. After consolidation, Westinghouse decided that it would keep people in the positions that they were already in and then try to upgrade them or change their job requirements to fit their capabilities. However, if the person did not have a degree but held a job for which management felt a degree was required, the person was retained (Tr. 733-4).

Westinghouse has a policy of paying for advanced education at the local universities. Time was also made available for employees to change their work hours so they could attend classes (Tr. 734).

Bourne initiated a meeting with Ruud in the summer of 1987, because Bourne wanted to learn what Ruud's concerns were and whether there were any other concerns beyond what he had written down in his audits for Rockwell (Tr. 735).

Bourne was told by upper management that Ruud, along

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with several other people, were going to testify before Congress, and that they were to be given time for preparing that testimony and for setting up separate charge accounts for both their travel expenses and their time (Tr. 736-7).

Bourne had two telephone conversations with Ruud in December of 1987 concerning whether Ruud had been fairly treated in the decision to select two quality assurance engineers to verify audit findings at N-Reactor on a temporary assignment. In the first conversation, Ruud wanted Bourne to be aware that he felt that he had volunteered for one of these temporary assignments and that it had been given to somebody else. Because of the timing of the assignment, he felt that he had been mistreated. Ruud did not tell Bourne about Johnson's comment, "If because of your notoriety with the subcommittee, other managers won't hire you, that's too bad." That comment would have got Bourne's attention. As a result of Ruud's telephone call, Bourne conducted an investigation to determine what had happened. Bourne inquired of all the individuals who were involved in making the decision and tried to determine whether Ruud's accusations were true. Bourne concluded that it was a close call, but everyone had assured Bourne that he had treated Ruud fairly and that the positions had in fact been filled before they were aware that he was interested. Bourne explained that, by "close call," he meant that there was a half hour difference in the timing (Tr. 737-9).

In Bourne's second telephone conversation with Ruud, Bourne told him what he found the chronology to be and that he was satisfied that Ruud had been dealt with fairly. Ruud responded, "I didn't expect anything else" (Tr. 740).

The purpose of the temporary assignments at N-Reactor was to resolve all of the issues that the Department of Energy had brought up prior to the restart of the N-Reactor. One of the requirements was to verify that all of the open items had been in fact resolved, and they wanted to do that with an independent check from the Quality Assurance Department. The N-Reactor was terminated in January or February of 1988 (Tr. 740-1).

The termination of BWIP eliminated about 60 quality assurance positions. Bourne made sure that these employees were made aware of any open positions in the rest of the Westinghouse system and that they were given assistance in

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preparing resumes and interviewing people for outside jobs (Tr. 742).

Bourne wrote the cover letter that is RX 21. Gelman prepared RX 3. This document was the rationale for the filling of two permanent jobs in the chem plants. It describes the qualifications of the candidates for the two positions (Tr. 742-5).

Bourne was interviewed once by Eric Nalder of the *Seattle Times*. Bourne told Nalder that he did not think that audit reports should be put in the newspaper. Bourne feels that it is much more productive for organizations to conduct their internal audits privately so that they can get more open and candid responses from them and so that their comments will not be published in the newspaper (Tr. 746).

Bourne testified before Congress on May 11, 1988 that he felt that Nalder took his comments out of context (Tr. 747-8).

Unusual occurrence reports are reports that are issued on unusual things that happen, such as safety issues of concern to the public. The reports are placed in the public reading room in the library, the press is free look at them, and a copy is given to the Department of Energy. Bourne thinks that he had been more than candid with the public and that Nalder was trying to make it look like Bourne was trying to cover things up, which he was not (Tr. 748-9).

Bourne was first certified as a lead auditor around 1978-1980 at Westinghouse. Bourne's main responsibility was

the Fast Flux Facility, but he was not physically located there (Tr. 750).

When BWIP was shutdown, Johnson was put into an audit administration position. Equivalent experience was substituted for the degree requirement. This also applied to Tuthill. Ruud was not selected because he did not have a degree and because there were others who applied for the job who did have degrees and who were better qualified in the opinion of the hiring manager, Gelman (Tr. 752-4).

Bourne was responsible for auditing at the PFP and Purex facilities. They were shut down after Bourne took

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over. PFP was later reopened, and Purex went for a couple of short runs (Tr. 757-8).

Bourne was not aware of any connection between Ruud's being summoned to Washington, D.C. and the plants being closed or that Ruud had issued the stop work order (Tr. 759-60).

Bourne believes that it was not proper to release an audit report to the public even if it were the only way in which Ruud could get Gelman to shut those plants down. The concern should have been resolved internally (Tr. 762).

In connection with CX 24, Bourne stated that he told Brown that he should have taken his concerns to Westinghouse first, and that D.O.E. would have appreciated that (Tr. 771-2).

In investigating Ruud's complaint of not being hired for the temporary position, Bourne talked to Pete Praetorious, Roger Johnson, Viens and Bob Fell. Bourne completed his investigation by December 23. At some point, Bourne took the position that it was not really important because it was a temporary appointment. The appointment was for six or eight weeks (Tr. 773-81).

CX 129 is a WHC requisition status change and an internal work order signed by Bourne dated February 1 rescinding the temporary jobs which were to run until September 30, 1988 (Tr. 781-4).

RX 21 refers to 16 exempt personnel who were reassigned. O. Daukins' work order was extended to February 28. Dorsey's temporary work order was for ten weeks. Not everyone who was on a work order was allowed to continue until the end of that work order. McDougall was extended until April. Dorsey and Dalhberg were brought back because the work they were doing was terminated (Tr. 786-8).

RX 21 was supplied to Wise in order to document what happened to other people in relation to Ruud. Bourne thought that this was necessary because Ruud had testified before Congress (Tr. 790-4).

The work order which showed a schedule completion date of September 30, 1988 was changed to expire on February 1, because the first work order was not identified to Bourne or Praetorious. When they realized that the work order was issued for almost a year, they corrected it (Tr. 799).

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Bourne was aware that Ruud had testified before Congress in October to the effect that Gelman was placed in a position for which he was not qualified. Bourne thinks that Gelman acted in an unbiased manner in the filling the temporary positions (Tr. 801-2).

Bourne recalls that notification posters with a telephone number for DOE were posted. Bourne recalls being informed in the management guides that managers who retaliated against employees who reported concerns outside the company would be disciplined (Tr. 811-2).

In RX 21 there is a paragraph that states that McGillicuddy will be offered a permanent position (Tr. 821).

McGillicuddy assisted in approving material control and receiving inspection techniques at N-Reactor. Material was being received for six months after the project had been shut down because those contracts were still in existence (Tr. 826-7).

Dorsey and Dalhberg were issued layoff notices because BWIP was terminated (Tr. 829-30).

J. *Testimony of Blaine McGillicuddy*

McGillicuddy went to Oregon State for three years in forest engineering, then into the military for three years, and then to the University of Southern California in civil engineering for two years (Tr. 832).

When McGillicuddy first went to work for Rockwell, he was a quality assurance engineer in the 200 Area. He maintained the quality assurance aspects of the B Plant, a standby facility to process plutonium as it comes out of the Purex facility. He remained in the 200 area at B Plant for probably three years (Tr. 833-4).

McGillicuddy then transferred to BWIP in Richland in approximately 1986. He was the supervisor of the Procurement Quality Unit, which was an organization set up to control the quality aspects of the suppliers they had subcontracted with. The subcontractors supplied technical and research services. The most prominent ones were: 1)

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the Rockwell Science Center in Los Angeles; 2) Temple University, which was doing basalt studies; 3) the University of Miami, which was doing tritium analysis of waters; and 4) Argonne Laboratory, which was doing basic research (Tr. 834-6).

The mission of McGillicuddy's organization was to monitor the subcontractors' quality assurance programs, essentially to assure the government that the subcontractors were establishing programs and maintaining those programs as they had established them (Tr. 836-7).

The program required that audits be performed once in the life of the contract or a minimum of every two years (Tr. 837).

McGillicuddy first worked with Ruud in the 200 Area, the 2750 Complex. In late 1987 or 1986, McGillicuddy interviewed Ruud for a position as quality assurance engineer with the Basalt Waste Isolation Project (BWIP). McGillicuddy believes that three or four others were interviewed. McGillicuddy recommended Ruud for the position because Ruud was a certified auditor, and McGillicuddy was under the impression that Ruud worked at Bechtel as an auditor, and, therefore, was well-qualified for the position (Tr. 837-9).

McGillicuddy believes that he made his recommendation to Harry Tuthill, and Ruud was transferred into the BWIP organization in January or February 1987 (Tr. 839).

McGillicuddy recommended Ruud for a Grade 9 position.

Ruud's grade level prior to his transfer to BWIP was Grade 6. When Ruud was first transferred into BWIP, he did not get the increase to Grade 9 because the Personnel Department would not allow an upgrade because it felt that, if it did so, too many people would be seeking to make changes (Tr. 840).

Before Ruud transferred to BWIP, McGillicuddy did not inform Ruud that there was a problem with the grade. Within four or five months, Ruud received the elevated grade and salary (Tr. 841).

Ruud's duties were to conduct audits, review QA programs for approval, and conduct surveillance of various purchasing activities. McGillicuddy felt that he and Ruud

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had a good supervisor-employee relationship. In September-October 1987, their relationship began to change. CX 122 contains notes that McGillicuddy wrote to himself regarding incidents that took place in September, October and November 1987. McGillicuddy began keeping notes because he had concerns about Ruud's work. Jensen was aware that McGillicuddy was keeping these notes 5 or 6 years ago (Tr. 841-7).

Page 7 of a memo dated October 5, 1987 concerns an article in the *Times* in which Ruud had stated that 5 out of 7 of their suppliers' programs were out of compliance. McGillicuddy felt that the article was critical of him and his group. The purpose of the memo was to find the basis for Ruud's comments. In his memo, McGillicuddy listed a number of items for Ruud to address as a result of that newspaper article (Tr. 847-52).

RX 69 is Ruud's typewritten response to McGillicuddy's memo. McGillicuddy did not think that Ruud's response adequately addressed the concerns raised but just consisted of general statements, not specific responses to McGillicuddy's questions. McGillicuddy responded to Ruud's memo by requesting that Ruud provide him with information on items 2, 3 and 4 of his original memo. McGillicuddy requested that Ruud respond more specifically to his memo. At the bottom of the memo McGillicuddy wrote, "I know it's tough being an authority." McGillicuddy did not intend to offend Ruud. McGillicuddy apologized to Ruud in a DSI ("Don't Say It, Write It") memo. Ruud never completed the assignment of October 16, 1987, because projects were being cancelled, and they had no work (Tr. 853-9).

As a result of WHC's losing the funding for the BWIP, McGillicuddy was slated to be laid off. After receiving his layoff notice, McGillicuddy was work ordered to the 100-N Project doing receiving QCP work for 3 to 4 months. McGillicuddy was then offered the opportunity to go back to BWIP with a guarantee that there would be 2 or 3 years of shutdown on BWIP before that job would be terminated, which he accepted. McGillicuddy was at BWIP for about three weeks when he was terminated in May 1988. McGillicuddy is now retired (Tr. 861-6).

McGillicuddy brought Ruud to BWIP because he needed

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someone with his certification as a lead auditor. McGillicuddy was certified as a lead auditor in 1973 or 1974 with Bechtel, but he was not certified when Ruud came to work at BWIP (Tr. 868-72).

When McGillicuddy interviewed Ruud, it was Ruud's understanding that Ruud was going to be promoted from a Level 6 to a Level 9. In fact, it was months later before Ruud got promoted. McGillicuddy only learned that Ruud could not be promoted about the time that he met with Congress and the plants were shut down (Tr. 872-4).

Ruud was given the option of transferring laterally as a Level 6 after he met with Congress, which he accepted (Tr. 875-6).

On November 23, McGillicuddy wrote, "Based on my present informed assessment of Casey's value to procurement quality activity, a further raise will not be forthcoming without a greater display of dedication to the goals of the unit and less to his own personal ambitions" (Tr. 884-6).

McGillicuddy gave Ruud one month to explain what was required to bring each element of each program into compliance but never received a response (Tr. 893-4).

McGillicuddy is certain that Ruud received a copy of his apology to the "It's tough to be an authority" comment (Tr. 895-7).

McGillicuddy was promoted to principal engineer and was not told that he had to have a degree (Tr. 903).

McGillicuddy never took action against Ruud based upon the notes found in CX 122 (Tr. 905).

K. *Testimony of Harry R. Tuthill*

Tuthill attended New Mexico Military Institute from 1961 through 1963 and received an associates in arts degree. He then transferred to the University of Nebraska and studied mechanical engineering for two and a half years (Tr. 908).

In 1985 Tuthill worked for Rockwell International as a

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senior quality engineer. He then was assigned to BWIP as a special staff assistant to Roger Johnson. After the consolidation he remained within the BWIP organization at Westinghouse Hanford Company. He is presently employed as a principal specialist in quality engineering and inspection (Tr.

908-11).

In the fall of 1986, McGillicuddy recommended Ruud for a position with Tuthill. Ruud was given the position but was not promoted. Tuthill stated that it's company policy not to promote at the time of transfer but to wait until the individual is in the organization. Tuthill attempted to promote Ruud after he transferred into BWIP (Tr. 911-3).

Tuthill recalls that Ruud was put in for promotion when he transferred to BWIP but was not promoted immediately. Ruud received the promotion effective April 6 (Tr. 914-5).

On December 17 or 18, Tuthill called a meeting and informed his staff that Congress had removed funding from two of the three sites to be studied for the nuclear waste repository. The only one to be funded was in Nevada. All funding for BWIP would end shortly and, if Westinghouse did not have positions for them, they would be laid off. At the meeting Ruud in essence stated that Westinghouse could not lay him off because, if it did, it would really have problems (Tr. 916-7).

Tuthill left BWIP in May of 1988. He did not try to find another job within Westinghouse Hanford because there were no positions available within his career goals, and the jobs he might have been interested in required a degree. He was aware that he could have posted for the positions even without a degree, but Westinghouse had stated that it needed and degree; therefore, Tuthill did not post for them (Tr. 917).

Tuthill is fairly certain that he did not say to Ruud, "Management's position is that you have made your bed, now you have to sleep in it." Tuthill believed that he had to be very careful what he said to Ruud because the latter was a whistleblower (Tr. 918-9).

Shortly after Tuthill moved to Las Vegas, he received a call from someone in the Westinghouse Hanford Company legal office inquiring about Ruud's claims. Tuthill told this person that he would help in the future for \$200 an hour. Tuthill was compensated for his time testifying at this

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hearing at \$30 an hour plus expenses and transportation (Tr. 920-1, 926-7).

Tuthill once heard McGillicuddy and Ruud in loud discussion (Tr. 924-925).

RX 71 states that Ruud exceeded his job performance requirements. Tuthill felt that Ruud did an excellent job

and that the only person who exceeded his abilities was McGillicuddy (Tr. 933-4).

Ruud was hired to be certified lead auditor and to train and certify people (Tr. 934).

L. *Testimony of Robert Gelman*

Gelman retired December 30, 1984, prior to which he was employed by Westinghouse Hanford Company (WHC) in the tank farms working for the manager of plant engineering. Prior to that he was employed by Rockwell Hanford beginning in 1976 (Tr. 950-1). Gelman received a B.S. in chemical engineering at Carnegie Tech and an MBA from the University of Pittsburgh (Tr. 951-2). Gelman has managed the Plutonium Finishing Plant and had an operations management position in the tank farms. He also managed a thorium production line at Westinghouse in Pittsburgh (Tr. 952). Gelman has had to shut down a facility for safety reasons at Westinghouse, Bettis Atomic Power Laboratory in Pittsburgh. Since that time he has not been afraid to shut down a facility (Tr. 952-3). Gelman became manager of 200 Area QA for Rockwell in September of 1986 (Tr. 953-4).

After the consolidation, Gelman retained many of the same responsibilities, but, as QA manager for the 200 Areas, he reported to the site QA manager (Tr. 965-6). In October-November 1987, Gelman received approval to requisition two engineer positions. Gelman wanted to fill four positions but only got approval for two of them (Tr. 985). He received 40 applications. Gelman first separated the qualified from the unqualified applicants by determining which applicants met the education and experience requirements. He hired one individual (Dana Farwick), who had a B.S. in geological engineering with many years experience, and another individual (Shafik Rifaey), who

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had an M.S. in nuclear engineering and who had reactor commercial experience and compliance auditing experience (Tr. 966-8).

RX 4 is the standard Westinghouse application evaluation form that Gelman filled out when he interviewed Ruud for the positions (Tr. 968). RX 3 lists individuals that Gelman interviewed for the positions (Tr. 974-6). RX 11 is a note to Gelman's immediate supervisor concerning Ruud's interview. It stated, "When I asked him to discuss the possible weaknesses, he said it was his image and how he felt people felt about him." At the time of the interview, Gelman was aware that Ruud was a public figure. Gelman was aware that Ruud had testified to Congress concerning Gelman's lack of QA experience (Tr. 977-9).

Gelman offered the position to Forsberg, Tominey and Adair, all of who turned it down. When Rifaey was offered the position, he accepted. Gelman offered the other position to Farwick, who applied to the generic posting, and he accepted it (Tr. 979-80).

Ruud did not have the educational background, the quality engineering background or the experience that Farwick had. In

addition, Farwick was also already in BWIP (Tr. 981). Gelman sent a memo to Bourne concerning Ruud's application because Ruud was a public figure and because Bourne was working on issues associated with Ruud. Gelman did not send memos concerning other applicants to Bourne (Tr. 984).

Rifaey had had no QA experience. However, he had had operational compliance assessment experience, which is equivalent. Rifaey had a significant amount of experience in the licensing area, in compliance assessments against licensing rule requirements, and in the Congressional nuclear field (Tr. 989-90).

In the August 1988 meeting, there was no finding that Clegg or anyone else thought was significant by itself to shut down any operations. Gelman was ordered by Clegg to write up the minutes of the meeting. Gelman wrote the minutes, got Baker's concurrence, and then distributed the minutes. Gelman received Ruud's memo regarding the minutes on August 26. On the Friday prior to Labor Day, Ruud agreed that if certain actions were taken and if they had a QA-QC

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audit early Tuesday morning, the plant could run. The audit took place on Tuesday morning, and a surveillance was done the following day. Then, the plant started running (Tr. 998-1004).

The plant was shut down on October 5 as a result of the DOE review of the audit's finding of over 50 criticality violations. Both the Purex facility and the PFP facility were restarted later (Tr. 1005-8).

Gelman was made manager of the 200 QA Area a week after the meeting in August because of his management and technical expertise, although he had no QA experience. Gelman is appointed to the QA-1 Committee on the basis of recommendations by other QA people (Tr. 1008-12).

Gelman was aware that there was an investigation concerning allegations that Ruud was retaliated against by not being selected for a position (Tr. 1014).

Gelman was responsible for the quality engineering and the inspection functions, not the audit functions, at the PFP and Purex plants (Tr. 1018).

Gelman corrected his testimony to reveal that he offered positions to Dennis Forsberg, Shafik Rifaey and Kathryn Tominey. Forsberg and Rifaey accepted. Farwick, whom he previously identified as being offered a position, actually came into the organization before this time frame (Tr. 1049).

RX 77 is a request for status change on Dennis Forsberg from a senior engineering position in the BWIP organization to a senior engineer in Gelman's organization. This relates to the posting that is on the second page of RX 73. Forsberg stayed in the position about four months (Tr.1050-4).

RX 78 is a letter from Dennis Forsberg to John Shaffer giving two weeks' notice for his termination from employment (Tr. 1055).

RX 76 is a request for status change for Shafik Rifaey from the BWIP organization to Gelman's organization and relates to the posting in RX 73 (Tr. 1056).

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RX 75 is a transfer request for status change for Dana Farwick into Gelman's organization and does not relate to the job posting in RX 73. It has a different position number, PT4E, and is dated December 16, 1987, which is before Gelman started the interviews for the job posting described in RX 73 (Tr. 1057-8).

Rifaey has a M.S. in nuclear engineering. Farwick has a B.S. in metallurgical engineering (Tr. 1058).

Gelman does not remember creating a list of candidates for the job posting that came after Ruud applied (Tr. 1059).

Forsberg came out the BWIP QA organization (Tr. 1060).

The selection for the job posting was made some time before February 29, 1988. Gelman interviewed Ruud on February 23. Forsberg started work after March 9, 1988 and terminated on April 30, 1988. Gelman knew that Forsberg was probably going to do that, because he wrote, "Appears to be searching outside of Hanford position, directly related to his geological background, but he was offered the job anyway" (Tr. 1063-6).

Gelman assumes that Farwick came on board some time after December 20, 1987. Gelman doubts that the document transferring Farwick into Gelman's organization was back dated. Gelman interviewed Farwick. It appears that Schaffer did not know what the position was when he signed the form recommending that Farwick be transferred. Gelman did not move Ruud into his organization because he did not have an opening for an auditor. Farwick's position was in addition to the other two positions which were filled (Tr. 1066-74).

Gelman offered the two positions to three people because there was hesitancy on the part of Forsberg and he wanted to have a backup. Tominey turned Gelman down (Tr. 1075-6).

CX 131 is a memo dated February 25, 1988, to File from J. H. Hammond, who was in Human Resources. The memo reads:

He was one of 40 bidders for several QA engineer positions. The hiring manager reduced the list to 17 who were interviewed. Nine showed

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interest for future consideration. Ruud was ranked eight of nine in this latter group. The manager selected the top three, one of whom is a female, and offers are in process for them. The fourth position will remain unfilled, pending additional candidates from the N-Reactor shutdown. Requisitions and documentation attached. (Tr. 1080-1).

Gelman recollects that there were four positions open in the entire QA organization, but only two were open within Gelman's group (Tr. 1081-2). Gelman believes that CX 28 may be in error. He only remembers two positions being filled (Tr. 1083-5).

Gelman does not recall why he told a DOL investigator that he was considering Ruud for a position on May 5, and it was not true (Tr. 1086-91).

RX 73 page 252 is a requisition form for the internal posting system within Westinghouse dated January 27, 1988. It was a supersedure of a requisition issued late in 1987 that Gelman wrote. Gelman was not the author of this specific requisition. The requirements for this position were for a generic quality engineer for the total site. Gelman's requisition was much more focused to the 200 Area (Tr. 1091-2).

Gelman requested in his requisition that the applicant possess an education requirement of a B.S. degree in engineering from an accredited university or possibly a B.S. degree in science or mathematics. Gelman first became aware that experience could be substituted for education when he saw the posting which was tailored and modified by Human Resources to put the equivalency in.

Gelman considered the education and experience. If he had not, Ruud would not have made the cut (Tr. 1093-5).

Gelman noted Ruud's weakness as lacking necessary technical degree or equivalent technical education to effectively overview engineering performance. The other applicants who were not selected were limited to construction QA (Tr. 1096-8).

Gelman was responsible for QA for the PFP and Purex facilities. Gelman is a chemical engineer. The hazardous waste goes through pipes to the Tank Farms. Only the steam

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coolant went to the ponds. One function of the incumbent is making sure that the configuration of pipes was done to prevent the material from being piped to the wrong location (Tr. 1098-103).

Among the hazardous materials being routed to the Tank Farms were fission produce waste, alpha and beta emitters, tributyl phosphate, and other partitioning eluents, which is a class of

solvents (Tr. 1104).

There has been for many years seismic analysis on both PFP and Purex. There would be a serious threat to the environment from a release of chemicals, if the plants collapsed during an earthquake. This would include not only radioactive material, but also hazardous waste materials (Tr. 1105-1108).

Hanford's mission is environmental clean-up and restoration of the site. Gelman would say that it is one of the largest toxic waste sites in the country (Tr. 1109-10).

From the time BWIP was closed down, the primary mission was to produce nuclear weapons material (Tr. 1112).

Gelman was looking for a quality assurance engineer, not a quality assurance auditor (Tr. 1113).

When Gelman hired Forsberg for the quality assurance engineer position, he hoped that he would remain in that position (Tr. 1115).

Hammond was not personally involved in the selection of candidates for the quality assurance engineer positions (Tr. 1115-6).

Frequently, authorization for filling open positions was terminated because of funding shortfalls, hiring freezes, and budgetary considerations. Budgetary considerations start with Congressional appropriations, and they work themselves down to the Department of Energy and then to the contractor (Tr. 1116).

Gelman says that he signed the statement given to the DOL investigator, but those were not his words (Tr. 1117).

Gelman reviewed Ruud's QA engineering experience found in RX 73 (Tr. 1118-20).

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Gelman ranked Ruud eighth out of nine candidates. All of the candidates except Ruud had four-year degrees (Tr. 1126).

M. *Depositions of Thomas M. Anderson*

Thomas Anderson was Vice-President for Environment, Safety, Health and Quality Assurance at Westinghouse Savannah River Company, a completely separate wholly-owned subsidiary of Westinghouse Electric Corporation beginning in the fall of 1988 (CX 135 at 19, 23).

Before Anderson went to Savannah River, he knew that Congressional hearings involving Casey Ruud and Jim Simpkin were taking place (CX 135 at 94).

After Anderson left Savannah River, he became president of Westinghouse Hanford Company from 1991 through January 1994. He was then reassigned to his current position as Director in the Energy Systems Business Unit in Monroeville (CX 136 at 12).

Anderson had several meetings in Tri-Cities with Ruud, an employee of a subcontractor for one of his managers, Mary Dodgen, at Savannah River. Anderson also met with Ruud in South Carolina in 1991 about training in Anderson's division (CX 135 at 10-11).

Anderson does not believe that Ruud was hired as an instructor. When Anderson visited with Ruud, Ruud was preparing materials but not teaching the course (CX 136 at 42-3).

Anderson had a discussion with Jim Bush, a vice president reporting to him, concerning whether to hire a whistleblower. Anderson also had a meeting with Schwallie and Moore to decide what disciplinary action should be taken against Bush (CX 135 at 77, 89). As a result of these discussions, Anderson gave Bush a written reprimand concerning retaliation against an employee for filing a safety-related concern (CX 135 at 46, 52, 55, 64).

Bush had recommended Goad's demotion (CX 136 at 92).

Although Anderson never saw the letter of reprimand in

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Bush's personnel file, he assumed it was there (CX 136 at 91).

For the year 1990, Anderson considered that Bush's performance was good (CX 136 at 90).

Anderson does not recall any discipline of any manager other than Bush (CX 135 at 76).

Anderson discussed the possibility of disciplining Beckmeyer, Manager of the Assessments Administrative Group within the Separations organization, because she was not dealing with subcontractors at arm's length. Beckmeyer told one of the subcontractors that Bush was retaliating against his employee (CX 136 at 93-4).

Anderson does not recall a discussion that took place after the Bush reprimand decision about sending a corrected notice to Silverman, Assistant Manager for Project Management of the Department of Energy, as to what

discipline would be meted out. Anderson may have made the determination of what action would be taken regarding Ruud (CX 136 at 117).

Anderson became involved in putting together information about how Westinghouse Hanford operated employee concern programs for other Westinghouse GOCO sites for Dr. Jacobi to use in his

testimony before Congress (CX 135 at 95).

N. *Deposition Testimony of Margy Beckmeyer*

Beckmeyer is Manager of the Assessments Administrative Group in Separations Quality at Westinghouse Savannah River Corporation (CX 137 at 3). She brought in Ruud and Simpkin as subcontractors to do work for her (CX 137 at 6).

Beckmeyer believes that Simpkin and Ruud had a negative impact on RI-TECH's ability to maintain a contract at Savannah River (CX 137 at 49).

Bush told Beckmeyer that Jim Simpkin and Casey Ruud were whistleblowers (CX 137 at 50-1).

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Beckmeyer believes that Luce wanted to know why Ruud and Simpkin were still working at the Savannah River facility. No one ever indicated to Beckmeyer why Ruud and Simpkin should not continue to work at the site (CX 137 at 53).

During a telephone conversation, Bush indicated to Beckmeyer that she could not hire Simpkin because he was a whistleblower (CX 137 at 77).

Bush told Beckmeyer that Simpkin and Ruud should not have been allowed on the site because they were whistleblowers (CX 137 at 83).

Mary Ellen Dodgen told Beckmeyer that Dodgen no longer wanted to use Simpkin because he was a whistleblower (CX 137 at 84).

Henry Wiedrich of RI-TECH indicated to Beckmeyer that, whenever Simpkin and Ruud were seen in the hall by Wise, security was involved, and they wanted to pull their clearances to have them removed (CX 137 at 90).

O. *Deposition Testimony of James Rankin*
Bush

Bush was the Manager of Quality Assurance at WSRC in February 1990 (CX 138 at 38).

Because of newspaper articles about Jim Simpkin's whistleblowing activities, Bush directed Margy Beckmeyer that Simpkin should not be involved in training anymore (CX 138 at 63). For these actions against Simpkin, Bush was counseled and received a letter of reprimand signed by Anderson (CX 138 at

96). However, this letter was not placed in Bush's file until he himself placed it there at least in part as a result of litigation (CX 138 at 121).

P. *Deposition Testimony of Mary S. Dodgen*

Mary S. Dodgen was the ESH in QA Division training manager. Her responsibility was to be supportive of the efforts of training integration (CX 140 at 13). She was

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Casey Ruud's direct supervisor at WSRC because Ruud worked under a contract for which she was responsible (CX 140 at 20).

Bill Quinn advised Dodgen of a newspaper article that referred to Ruud and Simpkin as whistleblowers employed at Westinghouse Savannah River Company (CX 140 at 29-30).

After Dodgen read the newspaper article, there was a meeting between Dodgen, McCormack and Quinn. The purpose of the meeting was to make Dodgen aware of the newspaper article concerning Ruud and his whistleblowing activities. Dodgen was given no guidance other than that she had a whistleblower reporting to her and that she was to get her job done. Dodgen recalls that Anderson told her to focus on accomplishing her assigned task and to treat people fairly according to procedure and protocol. She does not recall being given any instructions concerning providing Ruud with an escort (CX 140 at 31-5, 38, 42).

Q. *Deposition Testimony of William Luce*

Luce is the Manager of Regulatory Compliance at Westinghouse Savannah River Company (CX 143 at 5).

After his investigation of Bush's actions concerning Simpkin, Luce concluded that the actions by Bush were a form of reprisal against Simpkin for his actions at Hanford (CX 143 at 141).

R. *Deposition Testimony of William A. Quinn*

Quinn was Manager, Human Resources at Westinghouse Savannah River Company when he retired (CX 145 at 4). He joined Westinghouse Electric Corporation, the parent company, in 1957. (CX 145 at 12-3). He never met Casey Ruud (CX 145 at 8).

Quinn recalls Bush receiving a letter of reprimand but does not recall when he received it. Bush does not recall anyone else receiving a letter of reprimand (CX 145 at 23, 34). Quinn recalls Anderson being involved in meetings concerning Bush's reprimand but does not recall who else was present. The letter of reprimand went to the President's level, as did all

disciplinary actions which might result in

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an employee losing time in salary or any other disciplinary action (CX 145 at 34-5).

Quinn first became aware that Ruud was at the Savannah River site by reading it in the *Augusta Chronicle*. Quinn called Jim Hedges, manager of professional staffing, and asked him if Ruud was employed by Westinghouse (CX 145 at 37-8).

Quinn was interviewed by Congressional investigators, who asked if he was aware of the newspaper article. Quinn told them that he had seen an article in the *Augusta Chronicle* and checked to see if the individual was employed (CX 145 at 118).

S. *Deposition Testimony of Edgar Alan Vickery*

Vickery worked for Rockwell in the security organization in 1986 and 1987 (CX 147 at 14).

Vickery's present job is project manager at Kaiser. He manages the supply of engineering and project management services to Westinghouse in the operation of the waste tank remediation systems program (CX 147 at 25).

Vickery first heard of Ruud through newspaper articles in the Tri-Cities newspaper (CX 147 at 27).

Vickery never conducted surveillance of Ruud or anyone in his immediate family (CX 147 at 28).

Vickery feels that the situation with Ruud was primarily a Rockwell matter (CX 147 at 30).

T. *Deposition Testimony of Henry Wiedrich*

Wiedrich is president and chairman of the board of RI-TECH (CX 148 at 7). He hired Casey Ruud to train WSRC and DOE personnel on environmental matters (CX 148 at 72).

According to Wiedrich, Ruud speculated that Wise had him escorted off the site (CX 148 at 53).

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Ruud was not allowed to instruct in the GOCO seminar in Pittsburgh (CX 148 at 59).

On the day that Ruud's subcontract lapsed, Wiedrich received a call that Ruud was to get off the site within five minutes (CX 148 at 60-1).

Ms. Dodgen told Wiedrich that she thought Ruud was doing a wonderful job and could not have asked for better (CX 148 at 113).

Bill Howard told Wiedrich that he had a problem with Ruud because he was a whistleblower (CX 148 at 116).

Wiedrich felt that Ruud and Simpkin thought that Wise was the reason that the one-year rule was put into effect (CX 148 at 125-6).

Within months after Simpkin and Ruud left, Beckmeyer and Wiedrich's firm were investigated by WSRC for ethical violations (CX 148 at 137).

Wiedrich felt that Luce had asked Beckmeyer why Ruud and Simpkin were still on the site. Beckmeyer felt that they were doing good work (CX 148 at 145). An armed security guard escorted Ruud off the site. Wiedrich stated that it would be unusual to have Rich involved because he was not involved with badging (CX 148 at 148-9). Wiedrich testified that it was ridiculous that Ruud and Simpkin could not visit the plant without an escort, and that a class Ruud was scheduled to teach had been canceled (CX 148 at 151-2). Wiedrich said that it was very unusual that Ruud was escorted off the site because his contract had expired (CX 148 at 232-3).

Wiedrich was not aware that Ruud or Simpkin had ever reported anything to DOE at either Hanford or Savannah River that he had not first attempted to report using the internal system (CX 148 at 157).

Wiedrich made an offhand comment that he was surprised that Westinghouse had not hired a hit man for Ruud and Simpkin. Wiedrich had no reason to doubt Ruud's and Simpkin's sincerity in saying that they were concerned about

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the safety of their families (CX 148 at 171-3).

Wiedrich is aware of a couple of occasions in which people had indicated that they could not use Ruud or Simpkin because of their whistleblowing activities (CX 148 at 180).

Beckmeyer told Wiedrich that she feared for her job because she stood up for Ruud and Simpkin (CX 148 at 185).

Westinghouse Savannah River Company never asked Weidrich to remove Ruud or Simpkin from the site (CX 148 at 245).

U. *Deposition Testimony of David S. Grotyohann*

Grotyohann is the quality control manager employed by Atlantic Coast Mechanical, Inc. (CX 150A at 1).[2]

Grotyohann received a telephone call from Jon Samuels and was told that Joe Wise was listening on the speaker phone. Grotyohann was asked if Ruud was on contract to him. He told them that Ruud's contract had expired, but he thought that Ruud was on contract to Margy Beckmeyer. At the end of the telephone conversation, he was told that Samuels and Wise were going to find Ruud and take some action at that time. Grotyohann said that it made sense that Joe Wise was on the phone because he remembered that Ruud had told him that Wise was at a church basketball court and got upset when he saw Ruud (CX 150A at 32-3, 61-2).

Mary Dodgen told Grotyohann that Jacobi did not want Ruud on the contract and to take all the subcontractors off the contract (CX 150A at 39).

Grotyohann was told not to let Ruud have an escort (CX 150A at 41).

Sometime between the first of June and the end of August 1990, Dodgen told Grotyohann that they could not use Ruud to teach courses. This was sometime after the newspaper article appeared, but before the course was completed (CX 150A at 46-9).

Grotyohann felt that it was part of Samuels' job to keep tabs on Ruud (CX 150A at 52).

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Ruud told Grotyohann that Wise was an attorney who was involved in the whistleblower case but did not explain why Wise triggered him more than anyone else (CX 150A at 102).

Grotyohann believes that Dodgen said that they could not use Ruud as an instructor. As a result, all three contractors were taken off the list (CX 150A at 191, 193-4).

There are DOE personnel on the Savannah River site who are not contractor employees of Westinghouse (CX 150 at 195).

V. *Deposition Testimony of Jon M. Samuels*

Samuels is an Assistant to the President and Manager of the Productivity and Quality Programs Division at Westinghouse Savannah River Company (CX 152 at 3).

Samuels vaguely recalls discussing with Wise concerning where Ruud and Simpkin were working. He also vaguely recalls a

phone call to Grottyohann also concerning where they were working. It is possible that he made the telephone call to Grottyohann from Mr Wise's office but does not recall. He does remember that Grottyohann was to check on something and call him back (CX 152 at 34-5).

At a staff meeting, Samuels may have mentioned to Grottyohann that he understood that Grottyohann had a whistleblower named Casey Ruud working for him (CX 152 at 36).

Anderson and WSRC had a very clear policy about how to deal with people who raised complaints. Anderson was determined that they would not have the problems that they had had at Hanford (CX. 152 at 36).

Samuels recalls that someone asked him if it was true that Ruud and Simpkin were working for them. Samuels must have found out they were working in the training organization before he called Grottyohann (CX 152 at 37-8).

In January of 1991, Samuels was aware that Ruud had been removed from the site by Security (CX 152 at 44).

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Samuels may have learned from Wise that Ruud was working there, or possibly from Tom Anderson or Fritz Strankman. One of these individuals may have asked Samuels to find out where Ruud was working. Samuels does not specifically recall discussing Ruud with Anderson, but it's highly likely that he did. Samuels does recall discussing Ruud with Wise (CX 152 at 45-8).

Samuels believes that Wise stopped him in the hallway and, in a light-hearted manner, asked what kind of security manager he was if people whose contracts have expired still have their badges and access to the site. Wise told him that Ruud's contract was expired and that he still had his badge. Samuels called Personnel Security (Guy Rich) to verify this information. Samuels assumes that he told Rich to find out if Ruud had a contract, if he had a reason to be on the site, and if he had a badge. If Ruud had a badge, Rich was to retrieve it (CX 152 at 49-50, 52).

Samuels recalls Wise asking him to check out one other individual under a different set of circumstances (CX 152 at 53).

Wise had told Samuels that he had run into Ruud somewhere and noticed that Ruud was wearing his badge (CX 152 at 54).

There should be an incident report concerning Ruud's situation (CX 152 at 63).

W. Deposition Testimony of Merideth Metz

Metz is Manager, Westinghouse Employee Concerns Program at Westinghouse Savannah River Company (CX 153 at 3).

In preparation for her deposition, Metz brought with her the original notes she took from her meeting with Grottyhann (CX 153 at 8-9).

Metz guesses that Luce tasked her with contacting Grottyhann and getting information about Ruud. It is also likely that Luce asked her to get him a copy of the newspaper article that Grottyhann referred to (CX 153 at 12, 15).

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Metz understood that an employee was reporting to her that Wise may have engaged in illegal activities (CX 153 at 19).

Metz did not prepare a report of her meeting with Grottyhann, and no one has mentioned this meeting (CX 153 at 35-6).

In Metz' notes of her meeting with Grottyhann, she wrote only what Grottyhann told her (CX 153 at 42-4, 50).

Metz specifically remembers Grottyhann stating that Jon Samuels and Joe Wise had not done anything and he hated "to see Westinghouse get hung for the stupid moves of a few people" (CX 153 at 45).

DISCUSSION

I. APPROVABILITY OF THE SETTLEMENT AGREEMENT

The history of the settlement agreement (CX 60) is recounted above. The first issue before me is a) whether the agreement was fair, adequate and reasonable and should be approved, or b) whether the agreement was fatally vitiated by WHC's actions or by the confidentiality terms.

Settlement agreements in cases such as these are "favored and encouraged." *Macktal v. Brown & Root*, 86 ERA 23 at 16 (Secretary, November 14, 1989), rev'd on other grounds *sub nom. Macktal v. Secretary of Labor*, 923 F. 2d 1150 (5th Cir. 1991). They are to be approved if they are "fair, adequate and reasonable." *Porter v. Brown & Root*, 91 ERA 4 at 7 (Secretary, February 25, 1994), *appeal dismissed*, 46 F. 3d 65 (5th Cir. 1995); *Macktal, supra* 86 ERA 23 at 4 (Secretary, November 14, 1989); *Poulos v. Ambassador Fuel Oil Co.*, 86 CAA 1 at 2 (Secretary, November 2, 1987).

I find that this settlement was fair, adequate and reasonable. First, it was voluntarily entered into, as all

concede. Secondly, it was achieved by arms-length negotiation, not by any collusion. Next, both sides were represented by attorneys, and there is no allegation that Casey Rudd was incompetently represented.

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Fourth, and perhaps most importantly, by the agreement Ruud was paid \$115,000, a substantial amount that was more than six times his back pay claim.[3] I note that Ruud has not refunded any of this even while challenging the settlement (Tr. 431). Then, too, the agreement conferred other substantial benefits on Complainant: removal of adverse information from his file and the inclusion in that file of a "neutral letter of recommendation" (CX 60).

Finally, in entering into the agreement, Ruud avoided what would have been a substantial risk that he would end up with nothing or much less than \$115,000. As will be seen from the subsequent discussion, the jurisdiction issue in this case is somewhat difficult and, whereas I find that Ruud engaged in protected activity, this is by no means obvious, and reasonable people could differ on the issue. Also, although I have found that discrimination in violation of one of more environmental statutes did occur, at least some of WHC's objections are substantial and, indeed, some actually have prevailed in this recommended decision and order. Also, as will be seen, *infra*, at 97 in my hypothetical award, I have actually recommended a slightly smaller amount than was paid under the settlement.

For the above-stated reasons, I find that Ruud did not get a bad deal at all. Complainant does not seriously dispute: 1) that both sides were represented and that Ruud was competently represented; 2) that the amount paid was substantial under the agreement; 3) that the agreement conferred significant benefits to Ruud; and 4) that WHC's defenses are substantial. Because he voluntarily consented to the settlement agreement, Ruud should not be allowed to withdraw from it or oppose the Secretary's approval of it unless he can show that the agreement was vitiated by fraud or coercion, or unless important provisions of the agreement are contrary to law or public policy.

Both sides agree that, in order to show that the agreement was invalid because of fraud, Complainant must establish all of the elements of fraud. Complainant must demonstrate the existence of 1) knowingly false material misrepresentations 2) with intent to deceive and 3) Complainant's reliance thereon. *Beckendorf v. Beckendorf*, 457 P. 2d 603, 606 (Wash. 1969). Ruud has the burden of satisfying all of these elements by "clear, cogent and convincing evidence." *Beckendorf*, *supra*.

Complainant suggests that fraud was committed in

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several ways:

1. Ruud argues that WHC violated an oral commitment not to affect Complainant's employability adversely. However, in light of the settlement's integration clause (RX 57 at 3), I cannot find that anyone would have been bound by implied commitments. Indeed, Complainant acknowledged that he did not rely on any promises made by WHC outside the settlement agreement because, in light of what he believed to be false statements to the press and to Congress, he did not trust WHC management (RX 80 at 103-4). Thus, reliance, an important element of fraud, is absent.

2. Ruud argues that Respondent's breach of the confidentiality argument constituted fraud. However, it is arguable whether the confidentiality provision was ever violated. Attorney McCormack obviously believed that he had himself breached the confidentiality provision (CX 63). However, it is uncertain whether a violation occurred, because disclosure to DOE, a party to the original agreement (CX 57), should probably not be seen as a violation. The same goes for disclosure to DOL, which provides the forum for resolution of this dispute.

Most important, however, is the fact that, even if it were a breach, disclosure in violation of the agreement would not have been a material breach since Complainant has repeatedly stated that he did not care about the confidentiality provision (Tr. 292-3).

Of course, a breach, even if material, is not by itself sufficient evidence of fraud. *Milwaukee Auction Galleries, Ltd v. Chalk*, 13 F. 3d 1107, 1109 (7th Cir. 1994). Further, I have found no evidence that, at the time it entered into the agreement, Respondent intended to violate it.

3. Ruud alleges that WHC used illegal economic coercion against Complainant by denying him employment. I agree with Respondent that, at bottom, Complainant is arguing that firing an employee creates economic duress that invalidates any settlement agreement that the employee and employer may enter into. The Secretary has rejected this argument in *Macktal v. Brown & Root, supra*, at 9, *rev'd on other grounds sub nom. Macktal v. Secretary of Labor*, 923

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F.2d 1150 (5th Cir. 1991). I reject it here also.

4. Complainant also argues that Respondent's alleged lies to Congress and the press constituted fraud. However, whereas these misrepresentations (which I accept as such for purposes of argument) may have misled Congress and the public, I know of no way in which they could have constituted fraud for purposes of invalidating the settlement agreement.

5. Finally, Complainant argues that WHC's litigation conduct invalidates the settlement agreement. In this case, I believe that counsel for both sides acted in good faith and ethically throughout. True, both sides made a number of unfortunate omissions during discovery. I do not believe that WHC's counsel's pretrial errors establish bad faith. Much less did they demonstrate the kind of fraud that would invalidate a previously entered-into agreement.

For the reasons set forth above, I find that Complainant has not satisfied his burden of demonstrating that the settlement was fatally contaminated by fraud.

Nevertheless, Claimant argues, the settlement should not be approved because its terms preclude approval by the Secretary of Labor. According to the August 8, 1988 agreement (CX 60), the parties agreed that the terms of the settlement should remain "strictly confidential and shall not be disclosed to any other person (*Id.*).\" The settlement went on to provide a liquidated damages provision. Ruud argues that the settlement agreement itself prohibited its submission to the Secretary which, as the Secretary has already ruled, is a necessary precondition to its validity. Thus, the argument goes, by its own terms, the settlement self destructed.

True, a WHC employee, Charles McLeod, who was not involved in negotiating the agreement, did suggest that disclosing its terms to the Secretary would breach the agreement (CX 72 at 2749). However, I find that, because disclosure to and approval by the Secretary are necessary elements of the settlement process, the agreement should not be read to prohibit disclosure to the Secretary. To do otherwise would be to attribute to the parties ignorance of

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the law or an intent to destroy the settlement, an absurd result.[4]

Even more important, as stated, the confidentiality provision should under no circumstance render the settlement unapprovable because neither party now cares about the confidentiality provision, and only WHC ever cared about it at all in the first place (Tr. 292-3). To allow Complainant to torpedo a settlement agreement on the basis of a provision that he never cared about and which was only included at the instigation of WHC and for its own benefit would be a gross miscarriage of justice.[5]

Therefore, I recommend to the Secretary that he approve the settlement agreement. Theoretically, I could end my discussion here. However, to aid the parties and the Secretary, I will proceed to make findings and draw conclusions concerning the other issues in case the Secretary disagrees with my recommendation concerning the approvability of the settlement.

II. THE BURDEN OF PROOF

Under the burdens of production and persuasion in whistleblower proceedings, the complainant first must present a *prima facie* case by showing that: (1) the Complainant engaged in protected conduct; (2) the employer was aware of that conduct; and (3) the employer took some adverse action against him. *Dean Dartey v. Zack Company of Chicago*, 82-ERA-2 (Secretary, April 25, 1983). The complainant must also present evidence sufficient to raise the inference that the protected activity was the likely reason for the adverse action. *Id.* See also *Varnadore v. Oak Ridge National Laboratory and Lockheed Martin Energy Systems, Inc.*, 92 CAA 2, 5; 93 CAA 1 (Secretary, January 26, 1996) ("*Varnadore I*").

The respondent may rebut the complainant's *prima facie* showing by producing evidence that the adverse action was motivated by legitimate nondiscriminatory reasons. Complainant may counter the respondent's evidence by proving that the legitimate reason proffered by the respondent is a pretext. In any event, the complainant bears the ultimate burden of proving by a preponderance of the evidence that he or she was retaliated against in violation of the law. *St. Mary's Honor Center v. Hicks*, 113 S. Ct. 2742 (1993);

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Varnadore I, *supra*, at 84.

III. PROTECTED ACTIVITY (JURISDICTION)

I will begin my discussion of the jurisdiction issue by briefly considering the statutes under which, it has been suggested, jurisdiction may lie in this case. All of the statutes prohibit discrimination in terms of employment against any employee who performs some kind of environmental whistleblowing actions. However, the statutes do differ somewhat with regard to the kind of whistleblowing activity that is mentioned.

1. The Toxic Substances Control Act (TSCA) prohibits an employer from discriminating against a person because that person has taken any action to carry out the purposes of the act. 15 U.S.C. 2622. The primary purpose of the act is "to assure that chemical substances and mixtures do not present unreasonable risks of injury to health or the environment." 15 U.S.C. 2601(b)(3). However, 15 U.S.C. 2602(2)(B)(iv) exempts "special source material," "special nuclear material" and "byproduct material" as defined by the Atomic Energy Act (42 U.S.C. 2014) from the ambit of the statute.

2. The purpose of the Clean Air Act (CAA) is, among other things, to "protect and enhance the quality of the nation's air

resources." 42 U.S.C. 7401(b). The act prohibits discrimination in terms of employment against any person "carrying out the purposes of the act." 42 U.S.C. 7622(3).

3. The purpose of the solid waste disposal act (SWDA or RCRA) is, among other things, to "assure that hazardous waste management practices are conducted in a manner that protects human health and the environment." 42 U.S.C. 6902(a). Further, the act seeks to "minimize the generation of hazardous waste"(*Id.*). Congress stated its intention that the "generation of hazardous waste be reduced or eliminated as expeditiously as possible." 42 U.S.C. 6902(b). The act further provides that no person shall discriminate against any employee who has testified in any proceeding resulting from the administration of the act. 42

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U.S.C. 6971.

4. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) prohibits discrimination against any employee who testified in "any proceeding resulting from the administration or enforcement of" the act. 42 U.S.C. 9610(a). The purpose of the act is to prevent the release of hazardous substances into the air or water (*Id.*).

5. The purpose of the Safe Drinking Water Act (SDWA) is clearly to promote safe drinking water, although there is no "purpose" section in the act, which prohibits an employer from discriminating against an employee who "assists in an proceeding to carry out the purposes of this subchapter." 42 U.S.C. 300j-9.

6. The Water Pollution Prevention and Control Act, or Clean Water Act (CWA) is, by its terms, designed to "restore and maintain chemical, physical, and biological integrity of the nation's waters." 33 U.S.C. 1251. The whistleblower provisions of the act prohibit "discrimination against persons filing, instituting, or testifying in proceedings under this chapter." 33 U.S.C. 1367.

From the above, it can be seen that the TSCA and the CAA are the most liberal insofar as coverage is concerned. Both provide protection for anyone discriminated against for any action taken in furtherance of the very broad purposes of these acts. The other four statutes are somewhat less broad. The SDWA and the SWDA protect those who "testify in any proceeding resulting from the administration (or, in the case of the SDWA, "assist in any proceeding"). The language in CERCLA is to the same effect (*i.e.*, "testify in any proceeding"). The language of the CWA is slightly broader, protecting anyone who has "filed, instituted, or caused to be filed or instituted any proceeding

under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter." 33 U.S.C. 1367[6]

This case was initially brought under the ERA but, as stated in my recommended decision and order of April 12,

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1995, I found that, prior to 1992, the Hanford facility was not covered by the ERA. However, I ruled that Complainant could amend his complaint to allege jurisdiction under any other appropriate environmental whistleblower statute. This he did, although I cautioned that he was still required to prove jurisdiction at the hearing.

I find that Complainant has demonstrated jurisdiction under the CAA and under CERCLA. I base this on the following:

1. Concerning Ruud's so-called PFP audit:

A. Complainant noted that "a seismic event (earthquake) will release at least 17.9 grams of plutonium into the environment" (RX 83).

B. Ruud reported that cracks in cinder block primary containment walls have occurred and that, if they occur again, could release plutonium into the environment (*Id.*).

C. Ruud reported that there are no facilities to separate radioactive and non-radioactive liquid waste before it is discharged into a ditch (*Id.*).

D. Ruud noted that "zone one exhaust" does not have a filter, and any flow reversal during a contamination incident might force radioactivity into zone one and then directly into the atmosphere (*Id.*).

E. Ruud noted a potential for "unavoidable plutonium releases into the air space and out roof vents" in 291-Z Building when maintenance work is done (*Id.*).

2. Concerning his "burial ground audit," which was a subject of his Congressional testimony, Complainant testified about "environmental statutes that govern how waste was supposed to be disposed of, and that this appeared to be a major breach of those statutes" (Tr. 116).

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3. Meeting with Congressional staff people, Complainant described "his concerns regarding the effects of releases of hazardous and radioactive wastes at the Hanford site and its potential impact on workers, the environment, and the public" (Tr. 102).

4. Complainant, in meetings with Representative Wyden, made disclosures about releases of materials into the Columbia River, into the air, and from high-level nuclear waste tanks that were leaking (Tr. 103).

I find that jurisdiction under the other environmental statutes has not been demonstrated. Both the TSCA and the SWDA exclude "source material," "special nuclear materials" or "byproduct material" as defined by the Atomic Energy Act (42 U.S.C. 2014) from their coverage. 15 U.S.C. 2602(2)(B)(iv); 42 U.S.C. 6903(27). Although Complainant makes a game effort to demonstrate that he was also concerned about nitric acid, which is (or can be) a non-radioactive compound, I find no mention of nitric acid in his audit reports, in his discussions with Congress people and their staffs, or in his testimony. In addition, nitric acid would not be covered under the SWDA because it is a liquid, not a solid.

Also, I find no evidence that Ruud was concerned about contamination of drinking water or other surface or subsurface water. WHC scientist Robert Gelman testified that WHC was no longer dumping chemicals into surface pools of water at the times in question (Tr. 1101). True, Representative Wyden was concerned about the pollution of the Columbia River, but there is no evidence that Casey Ruud was (Tr. 103).

However, there is ample evidence that Ruud was very much concerned about air pollution, especially pollution from radioactive discharges. Because both the CAA and CERCLA do not exclude radioactive emissions into the air from their coverage, I find that Ruud has established jurisdiction under them.

I find that in both his PFP audit and his burial ground audit, as well his discussion with and testimony before the Congressional subcommittee, Complainant expressed concerns about the possible pollution of the air through accidental

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discharge of radioactive materials. Thus, he has established jurisdiction.

Against this, WHC makes a number of arguments, which I now consider:

1. WHC argues that, to establish jurisdiction under CERCLA, a complainant must have a reasonable belief that a

reportable quantity of a hazardous substance has been or is about to be released, citing *Du Jardin v. Morrison Knudsen Corp.*, 93 TSC 3 at 6 (ALJ, November 29, 1993). The Administrative Law Judge in that case did not so hold. In fact, he stated that complaints regarding possible violations and "quality problems" are protected.

2. WHC also argues that, while Ruud claims that his audits and testimony disclosed various deficiencies that could have led to emissions into the air, he offers no supporting record citations and does not explain why he had a reasonable belief that the CAA had been or was about to be violated. However, Complainant does not have to "explain why he had a reasonable belief." Suffice it to say that I find that Complainant's belief was reasonable based on the findings and conclusions in the various audits that Ruud performed (RX 83; CX 9). In these audits, Ruud extensively documented threats to the environment from potential emissions of radioactive materials. From reading the audits, even WHC acknowledges that these threats were not imaginary.

3. WHC argues that, in order to establish entitlement to relief, Complainant must show that the particular WHC managers who discriminated against Complainant knew about his particular disclosures or complaints. *Floyd v. Arizona Public Service Co.*, 90 ERA 39 (Sec'y September 23, 1994). However, where a complainant's whistleblowing activity is generally well known among corporate management, there is a high likelihood that a specific manager is aware of it. In this case, Casey Ruud's whistleblowing activities were widely publicized. Indeed, Ruud was a minor celebrity in the Pacific Northwest in the late 1980s, and he still is (CX 2, 39, 40, 42, 52, 53, 64, 77, 79; Tr. 35-7, 57). That Ruud cannot document that a specific official was fully aware of each audit report, each telephone call, and each

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meeting with a Congressional staff person by a particular time should not defeat an otherwise meritorious claim. Knowledge is, of course, an element that Complainant must prove, but a general knowledge of Ruud's whistleblowing activities, which knowledge can be imputed from his notoriety, will usually suffice.

4. WHC further argues that Ruud's whistleblowing related to safety concerns more than environmental concerns. It is sometimes impossible to separate environmental and safety concerns, particularly at the Hanford site. However, as I have stated above, I find that Ruud's whistleblowing activities extended to some discreetly environmental concerns as well as to safety concerns.

IV. RETALIATION (ADVERSE ACTIONS)

Complainant cites a number of adverse actions against him in his job which, he contends, were unlawful violations of whistleblower provisions of various environmental statutes. I will consider each action in turn.

A. The transfer to BWIP in October 1986. This adverse action was taken by Rockwell, WHC's predecessor in interest, and I find that the action cannot be attributed to WHC, despite the fact that Westinghouse retained some of Rockwell's former managers. Ruud makes a novel argument that Respondent "ratified" and should be held responsible for all prior illegal and improper acts of Rockwell. As Ruud cites no case for this proposition, I reject it.[7]

B. Harassment of Complainant by Blaine McGillicuddy. Ruud alleges that his immediate supervisor at BWIP, Blaine McGillicuddy, intentionally and maliciously retaliated against him because of Ruud's cooperation with Congress. McGillicuddy's notes establish knowledge of Complainant's testimony before Congress and McGillicuddy's own malice towards Ruud (CX 122). McGillicuddy's testimony reveals that he did in fact retaliate against Ruud by sarcastically assigning him to provide extensive information within a short time concerning all "out-of-compliance" supplier

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quality assistance programs (CX 122 at 7; RX 69). The sarcasm dripping from the phrase, "it's tough being an authority" is ample support for my finding that McGillicuddy's harboured a discriminatory animus (Tr. 857-8). WHC acknowledges that relations between the two deteriorated after October 1987 (Tr. 842) but contends that this was caused by Ruud's "arrogance and insubordination." I find that the arrogance present here was mostly McGillicuddy's. Thus, Ruud has established an inference of retaliation.

WHC argues that McGillicuddy's actions at BWIP were not related to any protected activity by Ruud and that there was a legitimate non-discriminatory reason for them. However, although WHC might have benefited from Ruud's task (if it had been completed), I find that the rationale ("the need to know how they were out of compliance") is pretextual. McGillicuddy knew or should have known very well from the *Seattle Times* article and RX 69 how WHC was out of compliance. Further, even if there were a dual motivation for the assignment, I find that WHC has not proved that it would have assigned the task even if Ruud had not engaged in whistleblowing.

Lastly, I reject the argument that McGillicuddy's actions caused Ruud no harm. Ruud obviously had to do a three-week project for McGillicuddy, which imposed a

substantial but unnecessary burden on him.

C. Failure to select Ruud for the position of temporary auditor at N-Reactor (December 1987). Complainant alleges that Respondent retaliated against him by making certain that Ruud would not be selected for a temporary job at the Capital N-Reactor upon Complainant's becoming aware that he was to be laid off. The retaliation in question consisted of ensuring that someone else got the job and that Ruud did not. The evidence shows that Ruud had requested assignment to the position prior to the company's soliciting the person who eventually got the job (CX 123; CX 55).

WHC argues that its failure to give Complainant the temporary assignment of auditor at N-Reactor did no harm to Ruud because it cost him no work at all in light of the fact that it was not a permanent job. In other words, WHC contends that Ruud would have been laid off at the same time regardless of whether he worked as an auditor at N-Reactor.

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However, an assignment to N-Reactor might have led to a permanent position (Tr. at 372). Even if not, the fact that Ruud wanted the job at N-Reactor but was denied it constituted an adverse action, even if it did not ultimately cost Ruud any money.

WHC further argues that Ruud never expressed an interest in the position until after it was filled. Although the evidence is conflicting, I find that it is more probable than not that Ruud called Roger Johnson, who filled the position, early on the day on which the position was filled and before the announcement of the selection (Tr. 219; CX 26; CX 114 at 2: CX 43, att. 6). Also, according to a statement given to a company investigator by Johnson, who is now deceased, Johnson told Ruud that "we did not have any additional need for auditors at N-Reactor." However, later that day, another person was selected to fill that job. According to an internal company investigation, Johnson may have stated to Ruud, "if, because of your notoriety with the subcommittee, other managers choose not to hire you, then that's just too bad" (CX 43, p. WHC/S&R-1038).

The heavy sarcasm, apparently infectious among WHC managers (see, e.g., Tr. 857-8), is a hallmark of their attitude toward Ruud. Because the typicality of the remark is significant evidence of its authenticity, I find that the quotation is probably authentic and adds evidence of malice to the equation.

WHC argues that Johnson did not know of Ruud's protected activity. I disagree. Unfortunately, Johnson is dead, and we cannot ask him what he knew or did not know. However, WHC acknowledges that Johnson was aware of Ruud's activity with the Dingell subcommittee (post-hearing brief

at 26), and there is significant evidence that Johnson resented Ruud for his environmental whistleblowing (CX 43, attachment 6 at p. WHC S&R-1038).

Because of these facts and because of Ruud's high credibility,[8] I find that Complainant has demonstrated that Johnson's failure to hire Ruud was motivated by discriminatory animus and that the reason given (late application) was false and, hence, pretextual.

D. Failure to select Complainant for permanent senior quality assurance engineer positions. At first, Complainant was not hired for one of these jobs because, it was alleged,

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although he was otherwise qualified, he had no college degree. There were at least two and possibly four quality assurance engineer positions available between the time when Complainant was laid off and May 11, 1988, when company officials were subpoenaed to testify before Congress (Tr. 1073; CX 28). At least one of the individuals chosen for the position by QA manager Robert Gelman subsequently resigned, but the position made vacant by the resignation was never offered to Ruud and was left vacant (Tr. 1065).

Almost immediately after the Congressional hearing, Respondent found two jobs for Ruud, but, after he accepted, WHC withdrew the offer unless Ruud agreed to drop all claims for retaliation against WHC (CX 34; Tr. 224-45). When this is added to the fact that Ruud had criticized Gelman's qualifications for the positions that Gelman currently held, and to the fact that Gelman was responsible for filling

these jobs, there is ample direct and circumstantial evidence of discrimination against Ruud with regard to the filling of these positions.

WHC argues that 1) Ruud has not shown that Gelman's decision not to hire him had any connection to any protected activity; and 2) that WHC had a legitimate nondiscriminatory reason for not selecting Ruud.

I find that there is sufficient circumstantial evidence to establish that Gelman's actions in not hiring Ruud were in retaliation for Ruud's testimony before Congress in which he had criticized Gelman for not being qualified for his position (CX 9 at 36). In light of the sensitivity of Gelman's position insofar as environmental protection is concerned, I find that this had a direct relation to Ruud's environmental whistleblowing activities. Gelman may believe that it did not (Tr. 977), but I find his testimony to be an exercise in self delusion. Any person who was not affected by a criticism like that leveled by Ruud in his Congressional testimony[9] would be a candidate for

sainthood. My observation of Gelman and my review of the record lead me to conclude that he is not such a candidate.[10]

Hence, Complainant has shown discriminatory animus and adverse action, entitling him to an inference that protected activity was the likely reason for the adverse action. However, Respondent argues that its actions were motivated

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by a nondiscriminatory reason, namely that WHC selected "better qualified" people for the quality assurance engineer positions. It is true that the two individuals chosen (Forsberg and Rifaey) did have B.A. degrees, whereas Ruud did not. However, as WHC acknowledges, Ruud had substantially more experience. WHC argues that that experience was not enough to beat the academic qualifications of Forsberg and Rifaey. However, WHC has

not demonstrated the relevance of a B.A. degree or that management could have reasonably concluded that a B.A. degree was important for this position.

Also, WHC attempts to distinguish the quality engineer position, which this position was, from that of an auditor, which Ruud held. Citing the testimony of one of its retired quality assurance managers at Tr. 733, WHC argues that it wanted to hire individuals with "technical backgrounds" for these positions "because they would understand WHC's operations better and make better QA engineers." This does not make sense. Logically, people with experience at the Hanford site ought to understand WHC operations as well as or better than those whose qualifications are primarily academic.

In addition, the stated distinction between quality engineer and auditor (see WHC brief at 36-7) has not been shown to have any relevance to the positions being filled. In any case, Ruud had been a quality engineer at Hanford in previous positions (RX 73 at 262-3).

Hence, I find that the asserted reason for denying Ruud the position has been shown to have been pretextual.

E. Respondent's alleged refusal to deal in good faith with Complainant after the 1988 hearings. Ruud alleges that, in negotiating with him, Respondent, through its general counsel's office, attempted to resolve disputes with Ruud, but, in doing so, did not negotiate in good faith. I find that tough negotiating does not equal bad faith retaliation here. Ruud complains particularly about WHC's refusal to offer reinstatement and back pay without a release of claims. This is not a failure to negotiate in good faith but is merely a failure to make Ruud a satisfactory offer, which is not the same thing as

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retaliation. The failure to make such an offer can be distinguished from the withdrawal of the already-made offer, which *in context* I have found to have constituted a retaliatory act.

F. Retaliation against Complainant at the Savannah River site. Ruud argues that, through its sister company, Westinghouse Savannah River Co. ("WSRC"), and through its former general counsel, WHC continued to retaliate against Complainant when he was at WSRC working for a contractor in a subsequent job. I agree with Ruud on this point. The corporate connection between WHC and WSRC is close enough to attribute the actions of one corporation to the other for purposes of whistleblower protection. WSRC and WHC are both wholly owned subsidiaries of Westinghouse Electric Corporation (CX 135 at 19, 23). In addition, important principals in this case have been top executives at all three corporations (e.g., Anderson (CX 135 at 15-6); Wise (Tr. 678-9); and McCormack (CX 149 at 34)). Respondent does not seriously contest this point in its brief.

The Secretary has held that whistleblower protection extends to former employees as well as to present ones. *Cowen v. Bechtel Construction, Inc.*, 87 ERA 29 (Secretary, August 9, 1989); *Flanagan v. Bechtel Power Corp.*, 81 ERA 7 (Secretary, June 27, 1986). See also *Du Jardin, supra*, 93 TSC 3 at 6-7.

Next, I find that there were at least two acts of retaliation against Ruud at WSRC that are attributable to his whistleblowing activities at WHC. First, Complainant was prohibited from performing his duties training DOE personnel at the Savannah River site shortly after management there received copies of newspaper articles telling of Ruud's presence at WSRC and remarking on his past whistleblowing activities (CX 149 at 152). This action against Ruud was taken because of his whistleblowing activities at WHC (Tr. 300; CX 148 at 126, 180, 185; CX 150A at 32-3, 39, 46-9 and appendix, p. 000010). No other reason has been suggested.

Secondly, Complainant was summarily removed from the premises at WSRC under threat of force (he was given five minutes to get off the premises on orders by Wise, the General Counsel of WSRC, who had been General Counsel at WHC at the time of Ruud's whistleblowing activities there (Tr.

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302; CX 149 at 208)). Wise's denial of culpability (Tr. 703-4) is not believable in light of the testimony of Ruud (Tr. 302) Wiedrich (CX 148 at 52-3), and Grottyhann (CX 150A at 39, 61-2) that the order probably came from Wise in retaliation for Ruud's previous whistleblowing activities at WHC.[11] The reason given for his expulsion (CX 149 at

204-5) was, in my view, transparently pretextual, because of the flimsiness of the "reason" and because of the animus that Wise and Jacobi harbored against Ruud - animus that was remarked on by several people (CX 148 at 33, 171-3; CX 150A at 28, 32-3, 39, 62 and appendix, p. 000010).[12]

In fact, Respondent does not contend in its brief that Ruud was not retaliated against at WSRC for whistleblowing activities at WHC.

G. Illegal surveillance. Complainant argues that he was the victim of illegal surveillance conducted of him while he was employed at the Hanford facility. However, I find that the circumstantial evidence of the occurrence of this surveillance is weak and, thus, the allegation is unproved. The evidence demonstrates only that WHC had a motive to conduct surveillance and possibly the opportunity to have done so. However, there is no direct evidence of record that any such surveillance ever occurred (See CX 147; Tr. 579-89).[13] Indeed, Ruud himself appeared unsure of whether his phone was ever wiretapped (Tr. 295; 447-9).

* * * *

WHC argues that Ruud's claims concerning harassment by McGillicuddy and WHC's failure to give him the N-Reactor position are untimely because complaints were not filed within 30 days of the date of the violation as provided in 29 C.F.R. 24.3(b). As I found in my April 12, 1995 order, the date of Ruud's complaint was February 28, 1988.

According to the statutes under which Complainant's claim has viability, Ruud indeed had thirty days from the date of the alleged violation to file a complaint with the Department of Labor. 42 U.S.C. 7922(b)(1); 42 U.S.C. 9610(b). Respondent concedes that Complainant's claim was timely as to the denial of the quality engineer position in February 1988 because he received the notice of the layoff on January 29 of that year (RX 60 at 1125). However, WHC

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insists that the complaint is not timely as to any event that allegedly took place before January 1988 - i.e., McGillicuddy's harassment of Ruud (October 1987) and Ruud's failure to obtain the N-Reactor assignment (December 1988).

Respondent is correct in urging that the decision to implement an adverse action, rather than the date when the consequences are felt, marks the occurrence of the violation. *United Airlines v. Evans*, 431 U.S. 553 (1977). However, I find that the complaint was timely as to the 1987 violations under the "continuing violation rule," and that the continuing nature of the violation tolled the

running of the statute of limitations.

In order for an environmental whistleblower complaint to be timely filed under a continuing violation theory, the complainant must show a course of related discriminatory conduct and that the complaint was filed within 30 days of the last discriminatory act. *Varnadore I* at 73. In this case, I find that WHC management engaged in a "course of related discriminatory conduct," beginning with Ruud's delayed promotion during the Rockwell years at BWIP (Tr. 196-8), continuing into 1987 with McGillicuddy's harassment under WHC management and Ruud's failure to obtain the N-Reactor assignment (December 1987) and the quality engineer positions (January 1988). It did not end until 1991, when Wise and Jacobi forced Ruud out of his job with a contractor (RI TECH) at WSRC (CX 150A at 39, 46-9, 191, 193-4).

In addition, as WHC concedes, at least one discriminatory act (the denial of the quality engineer position in January 1988) occurred within 30 days of the filing of the complaint (brief at 15, n. 12). Thus, I find that the statute of limitations is tolled as to all previous discriminatory acts.

WHC does not suggest that harassment at WSRC in 1990 and 1991 is not independently actionable despite the fact that Complainant never attempted to amend the complaint to include these events. Even Ruud's supplemental complaint of August 23, 1994 did not mention the Savannah River site harassment.

However, because a complaint had already been filed in 1988, putting Respondent on notice of Ruud's allegations of discrimination generally, and because Respondent was clearly on notice by the time of the hearing that Ruud intended to

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pursue the Savannah River site allegations (e.g., see Complainant's trial brief at 19-26), there has been no prejudice to WHC from failure to amend the complaint to note the South Carolina violations. Also, at least until June 7, 1994, when the Secretary remanded the case for hearing, Ruud had every reason to believe that the case had been settled.[14]

IV. RELIEF

I have found that WHC unlawfully discriminated against Casey Ruud in at least four significant ways: 1) harassment by Blaine McGillicuddy; 2) failure to select Ruud for the temporary auditor position at N-Reactor; 3) failure to select Ruud for a temporary auditor position in December 1987; and 4) expulsion of Ruud and removal of him from performing any duties at the Savannah River site subsequent to his layoff at WHC.

However, because I am recommending approval of the 1988

settlement agreement, I am not recommending the award of any

relief other than what has already been paid under the settlement agreement.

Nevertheless, in order to allow the Secretary to render a final decision and order if he decides not to approve the settlement, I make the following findings and conclusions which I believe the record justifies with respect to Ruud's entitlement to relief if the settlement is not approved.

1. Complainant would be entitled to reinstatement in the position he held prior to layoff.

2. Ruud would be entitled to back pay from and after 1988. In this regard, I have considered the computations proffered by the parties (See appendix A hereto). I agree with the assumptions and computations contained in Exhibit B to WHC's main brief. WHC's computations give Ruud average increases through 1989 (CX 150 at 2), then assumes a promotion to Grade 34 and would award him a 17.21% increase to raise him to the minimum pay for that grade. From 1991 on, WHC assumes that Ruud would get average pay raises.

Complainant and Respondent assume different annual percentage increases. I find Respondent's increases to be more realistic. For example, I can find no basis for Complainant's raising his hypothetical salary to mid point in Grade 34 in 1990 but find that a raise to step 1 of that grade is reasonable. Also, Ruud's speculation that, if reinstated at WHC, he would be entitled to the position of staff engineer (Tr. 305) is unexplained and unsubstantiated.

WHC's calculations exclude benefits for the period after May 1991, allegedly because Ruud "must have had good benefits after May 1991, when he became an employee of the Department of Ecology and then DOE" (reply brief at 14). Because I have no basis for determining what his benefits if any should have been for the period 1991-5, I have not provided for them in this hypothetical computation (the burden of proof being Ruud's).

3. Attorneys' fees are to be decided upon separate motion if Complainant prevails.

4. Should Respondent refuse to reinstate Complainant, or should the Secretary find that reinstatement is not feasible, Ruud would be entitled to front pay calculated on the basis of his remaining expected professional life (including fringe benefits), less the salary he would be expected to earn in his job with the Washington State

Department of Ecology, the remainder being discounted at 4% for its present value.

5. I find that WHC's discriminatory actions caused Ruud some emotional distress (as he testified, without contradiction, Tr. at 303). He would have been an extraordinary person had he not suffered some emotional distress through all of the travail to which he was subjected. Unfortunately, I have no expert medical testimony establishing the nature and the amount of this distress, but, in part for reasons discussed at n. 8 above, I find that Ruud's report of emotional distress is entirely credible. Thus, I would hypothetically recommend that he be awarded \$15,000 for that distress. This figure would have been higher had his emotional distress required that he obtain professional help.[15]

6. Because I have found that Complainant has not shown protected activity under the SWDA and TSCA, which are the only environmental protection statutes to provide for exemplary damages, I find that Ruud would not be entitled to such damages. If I had found that exemplary damages could be awarded, I would have awarded \$12,500, which is somewhat less than that awarded by the Administrative Law Judge in *Varnadore, supra*, 95 CAA 2 at 81, a case in which company retaliation was considerably more serious. On a scale of zero to ten (zero representing blameless non-discriminatory conduct and ten representing the most execrable discriminatory conduct), I would place WHC's conduct toward Ruud at about 4.5, whereas I would rate that in *Varnadore* at about 7.0. WHC's conduct was bad enough to justify some exemplary damages but not an astronomical amount.[16]

As can be seen from appendix A to this recommended decision and order, I find that Complainant would be entitled to \$98,236.82 in lost wages, from which the amount paid under the settlement (\$115,000) should be deducted. To this should be added \$15,000 for mental distress, giving Complainant a hypothetical award of ,763.18 less than he received under the settlement. If exemplary damages were allowed, this figure would be augmented by \$12,500.

VI. RECOMMENDED ORDER

IT IS RECOMMENDED that the proposed settlement agreement (CX 60) be approved.

FLETCHER E. CAMPBELL, JR.

ADMINISTRATIVE LAW JUDGE

FEC/lfrl
Newport News, Virginia

[ENDNOTES]

[1] The following abbreviations are used throughout this Recommended Decision and Order:

CX - Complainant's exhibits
RX - Respondent's exhibits
Tr. - Transcript of the hearing

[2] In a previous order, I incorrectly designated this deposition CX 150, an already used exhibit number. I am here redesignating Grottyhann's deposition as CX 150A.

[3] When Complainant was laid off, he was earning approximately \$35,000 per year. Ruud executed the settlement agreement five months after he was laid off, and five months of back pay would roughly be \$14,600.

[4] *Gillilan v. Tennessee Valley Authority*, 89 ERA 40 (Secretary, April 12, 1995) is not on point to the contrary because, in that case, the agreement stated that it would be null and void if it could not be reviewed *in camera* and kept under seal. Similarly, the settlement agreement in *Brown v. Holmes & Narver*, 20 ERA 26 (Secretary, May 11, 1994), had a much more rigid and expansive confidentiality clause that forbade the parties from disclosing "all matters arising or relating to" the settlement. I note that the Secretary approved the settlement in *Brown, supra*, finding the offending confidentiality provision to be severable. However, on the severability question, see *Macktal v. Secretary of Labor*, 923 F.2d 1150 (5th Cir. 1991).

[5] The Secretary has construed a confidentiality term as not restricting any disclosure required by law, including disclosure

to the Secretary for approval of a settlement. See, e.g., *Green v. Management Analysis Co.*, 94 TSC 9, 95 TSC 1 (Secretary, June 20, 1995); *Bragg v. Houston Lighting and Power Co.*, 94 ERA 38 (Secretary, June 19, 1995); *Ing v. Gerry L. Pettis Veterans Affairs Medical Center*, 95 ERA 6 (Secretary, May 9, 1995).

[6] The courts have broadly interpreted this and other whistleblower protection statutes to cover almost any whistleblowing activity whose intent is to carry out the purposes of the statutes. See, e.g., *Passaic Valley Sewage Com'rs v. U.S. Department of Labor*, 992 F. 2d 474 (3d Cir. 1993), in which the court held that even ill-formed intracorporate complaints were protected under the CWA.

[7] However, I do find that the actions of holdover managers such as Blaine McGillicuddy while they worked for Rockwell are admissible to show a pattern of retaliation and discrimination. Further, they help prove a continuing violation within the meaning of *Varnadore I.*

[8] Respondent attacks Casey Ruud's credibility (brief at 1-7). WHC's exhaustive litany of alleged inconsistencies with the record serves only to establish how truthful Ruud really was. All that Respondent has done is establish that Rudd is not a totally objective person and thus not super human. After observing and listening to Rudd during a four-day hearing, I have concluded that he is what he seems to be - a concerned person who is willing to risk his career and livelihood to report serious environmental and safety problems. I found his testimony to be quite truthful and more objective than most in his position would have been.

[9] I accept WHC's argument that Ruud's criticism of Gelman was not as stinging as Ruud has implied. See WHC reply brief at 3-4.

[10] See, e.g., his resistance to a stop-work order after presentation of an alarming audit during the Rockwell days at BWIP (Tr. 86-9).

[11] Indeed, a WSRC manager, James Bush, was reprimanded (albeit quite gently and he was subsequently promoted) by the company for his retaliatory actions against another whistleblower, James Simkin (CX 135 at 64; CX 145 at 23; CX 83). I find that the retaliation against Simkin is evidence of a pattern of corporate misconduct at WSRC against whistleblowers such as Simkin and Ruud (CX 149 at 174; CX 138 at 63, 72; Tr. 610).

[12] The pretext was, "there was a problem with us hiring somebody on contract and then sending them to do DOE's work" (CX 149 at 205). Further, Ruud's badge had expired (*Id.* at 208). These are insufficient reasons to have Ruud expelled from the premises under guard.

[13] Ruud cited one Gary Leckvold, who was quoted in a newspaper article to the effect that Ruud had been wiretapped (Tr. at 294), but I regard this double hearsay as unreliable, and Complainant's brief does not even mention it.

[14] Even if failure to amend the complaint means that the Savannah River site events cannot be considered independently actionable, they are evidence of Westinghouse animus. My hypothetical award of damages would be the same either way.

[15] In *Varnadore v. Oak Ridge national Laboratories*, 95 CAA 2 (ALJ, June 27, 1993), the Administrative Law Judge awarded \$10,000 in compensation damages for emotional distress (slip op. at 80-1). In doing so he noted the difficulty of placing a dollar value on psychological harm. In *Varnadore*, unlike in the instant case Complainant presented expert psychiatric testimony supporting his claim. However, because the stress that Ruud was subjected to lasted longer than did that which Varnadore endured, and because Ruud's stress was compounded when he actually lost his job at RI TECH because of retaliatory conduct, I am hypothetically recommending slightly more in compensation for emotional distress than did the Administrative Law Judge in *Varnadore*.

[16] Initially, Respondent argued that Complainant should have any back pay award limited to an amount which he would have received had he been employed from February 29, 1988 to August 15, 1988. The reason Respondent gives for such a limitation is Ruud's alleged responsibility for the seven-year delay in the matter coming to hearing. I find that there is no evidence on the record placing the sole blame on Casey Ruud for the hearing being delayed. Indeed, if anything, the blame belongs on WHC because of its excessive concern about nondisclosure.